

**FINANCE AND ADMINISTRATION CABINET**  
**OFFICE OF PROCUREMENT SERVICES**

**Personal Service Contract**

**And**

**Memorandum of Agreement**

**Contracting Manual**

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## **Commonly Used Acronyms**

<b>FAC</b>	Finance and Administration Cabinet
<b>FAP</b>	Finance and Administration Cabinet Manual of Policies and Procedures
<b>GCRC</b>	Government Contract Review Committee
<b>HB</b>	House Bill
<b>LOI</b>	Letter of Intent
<b>MOA</b>	Memorandum of Agreement
<b>OPS</b>	Office of Procurement Services
<b>PON</b>	Proof of Necessity
<b>PSC</b>	Personal Service Contract
<b>RFP</b>	Request for Proposal
<b>SB</b>	Senate Bill
<b>SOS</b>	Secretary of State
<b>T&amp;C</b>	Terms and Conditions

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## **Personal Service Contract (PSC) Definition**

**KRS 45A.690(1)(g)** "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount.

## **PSC FAQ**

- The statutes, policies and procedures governing PSC's are KRS 45A.690 – KRS 45A.725; FAP 111-43-00; 200 KAR 5:307 and 200 KAR 5:309. These are available on the FAC website; and in the Reference Document Section of this manual. \_ <http://finance.ky.gov/business/eprocurement/state-laws.htm>
- PSC's are used to establish a contract with a private entity.
- PSC's must go through a competitive process OR have sole source OR not practicable or feasible to bid approval from the Secretary of the Finance and Administration Cabinet or his designee, the Office of Procurement Services (OPS) Executive Director.
- PSC's shall be filed with the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) unless exempt by statute or by an exemption granted by the GCRC.
- The GCRC has established policies which impact PSC's established pursuant to KRS 45A.690 – KRS 45A.725. These are located on the GCRC website and in the Reference Document Section of this Manual.  
<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>
- PSC's shall be filed with the GCRC prior to the effective date.
- PSC's may not extend past the end of the biennium in which they are created unless there is statutory authority to do so; or by an exemption granted by the GCRC.
- PSC's less than \$10,000 are exempt from routine GCRC review but must be filed with them for information purposes.
- PSC's less than \$10,000 must be filed with the GCRC **no more than** thirty (30) days after the effective date.
- PSC's are created as eMARS PON2 documents unless they are exempt from filing with the GCRC.
- PSC's exempt from filing with the GCRC are created as eMARS PO2 documents.

## **EO1/Letter of Intent (LOI)**

***EO1/Letter of Intent*** –Approval of an EO1/Letter of Intent must be obtained prior to the PSC contracting process.

EO1's for **PSC's less than \$10,000** are reviewed and approved at the agency level.

Agencies shall file a **Letter of Intent (LOI) for PSC's equal to or greater than \$10,000**. Agencies shall use the EO1 document to file the LOI with FAC.

The "Purpose and Justification" field of the LOI must be completed and must contain the following:

- Description of needed service.
- Briefly explain why service cannot reasonable be provided by a state agency or state university.
- Estimate planned amount of work involved.
- Estimate contract cost per fiscal year – including anticipated amendments.
- Identify agency contact person, if other than the requestor on the document.

All required information must be included. If additional space is needed, agency shall include additional information in a Word document attached to the header. Enter as much information as possible in the "Purpose and Justification" field and add, "Additional information attached at the Header."

LOI shall be filed with FAC no less than two (2) weeks prior to the intended RFP issue date.

- Select "Personal Service Contract" from the "type of request" drop down list to route to OPS.

The LOI will be reviewed and final approval given by FAC.

## **PSC Process Overview**

The PSC contracting process begins at the agency level with the creation of a Request for Proposal in the state's electronic procurement system, currently eMARS.

All RFP's for PSC's, including those less than \$10,000, shall be submitted to OPS for review and approval prior to issuance.

All RFP's shall include **Reciprocal Preference** for Kentucky resident bidders and **Preferences for a Qualified bidder or the Department of Corrections, Division of Prison Industries** KRS 45A.490 – 494; KAR 200 5:410.

The RFP shall be submitted at least seven (7) days prior to the intended RFP "Let Date"; with a "close date" a minimum of seven (7) days after the "Let Date."

The Agency shall enter the approved EO1/LOI number in the document comments. **DO NOT** attach the EO1/LOI to the RFP header.

Upon approval by OPS, the RFP will be posted to the Vendor Self Service Website, pursuant to the "Let Date."

Once an agency has completed the RFP process, awarded the contract and obtained required signatures, the agency shall submit the PSC in the state's electronic procurement system. Upon final eMARS approval at the agency level, the PSC enters the Finance and Administration Cabinet, Office of Procurement Services (OPS) worklist.

PSC's are reviewed by OPS to ensure that the using agency follows all policies, procedures and statutes that govern personal service contracts; that the correct procurement type, cited authority and terms and conditions have been used; and that the PSC has been created correctly in the eMARS system.

Once the review by OPS has been completed and the PSC shown to be in compliance, it is approved and routed to the Finance and Administration Cabinet, Office of the General Counsel (Finance Legal) for review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction.

Finance Legal reviews the PSC for accuracy and statutory compliance. If the PSC is shown to be in compliance, it is routed to the Finance Secretary's worklist for review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction.

Pursuant to KRS 45A.045(2), "No purchase or contract shall be binding on the state or any agency thereof unless approved by the Finance and Administration Cabinet or made under general administrative regulations promulgated by the Cabinet". KRS 45A.695 also requires that the Secretary of the Finance Cabinet or his designee has final approval over all Personal Service Contracts and MOAs for the purpose of overriding the committee or declaring an emergency.

Upon review and approval by the Finance Secretary designee, the PSC is routed to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) to await consideration pursuant to KRS 45A.705(4) for final review.



If the Finance Secretary designee does not approve the PSC, it is rejected back to the submitter with an explanation for the rejection.

## **GCRC PSC Process Overview**

Upon final FAC approval in eMARS, the PSC is automatically filed with the LRC GCRC via a database interface. PSC's in Final Phase in eMARS by the last business day of the month are placed on the following month's GCRC meeting agenda. The GCRC monthly meetings are typically the second Tuesday of the month, except during the Legislative session when it may be moved due to scheduling conflicts. The meeting time and location is posted on the GCRC website.

PSC's must be filed with the GCRC prior to the effective date. PSC's filed with the committee after the effective date of the contract must have a start date request, approved by the FAC Secretary, or his designee the OPS Executive Director, attached to the eMARS contract header.

GCRC staff may contact the person listed as the contact on the PON to ask questions concerning the PSC or to notify the agency to appear before the GCRC at the monthly meeting.

If the contract is disapproved by the GCRC, all contract activity must stop immediately.

Pursuant to KRS 45A.705, the agency may request the Secretary of the Finance and Administration Cabinet or his designee to determine if the PSC shall:

- (a) Be revised to comply with the objections of the committee;
- (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
- (c) Remain effective as originally approved.

The Secretary of the Finance and Administration Cabinet or his designee shall notify the committee of the action taken within ten (10) days from the date the PSC was reviewed by the committee.

## **PSC Terms and Conditions Requirements**

### **Terms and Conditions**

*\*PSC Standard Terms and Conditions are available in eMARS and in the [Reference Documents](#) Section of this manual and at <http://finance.ky.gov/internal/eMARS/procurement.htm> .*

Pursuant to FAP 111-43-00, the PSC shall include the following:

- All terms and conditions agreed upon;
- The sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115;
- The statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485;
- The Legislative Research Commission (LRC) Proof of Necessity form;
- Language regarding access to documents required by 200 KAR 5:314;
- And language of KRS 45A.695(7) regarding payments and cancellation clause required by 45A.695(1).

In addition to the terms listed in FAP 111-43-00, the PSC shall include the following clauses:

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

***\*Additional information on Contract Workers is located on the eProcurement website at:***

<http://finance.ky.gov/business/procurementservices/procurementhowto.htm>

**Registration with the Secretary of State by a Foreign Entity.**

An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response.

**If a copy of the certificate or justification for the foreign entity's claim that it is not required to obtain a certificate is not received by the contracting**

**agency within the time frame identified above, the foreign entity's bid shall be deemed non-responsive or the contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx> .

**Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

Pursuant to KRS 45A.695, **no payment shall be made on any personal service contract** unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

**\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website:**

<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**PSC Required Attachments**

- Approved EO1/LOI is required for any PSC over \$1,000. Must be attached to the header as a pdf.
- EO1 approval is required for PSC's less than \$10,000 and is reviewed and approved at the agency level.
- LOI is required for PSC's equal to or greater than \$10,000 and is reviewed and approved by the Finance and Administration Cabinet.
- Required Affidavit for Bidders or Offerors (signed and notarized). Must be attached to the header as a pdf.

**EO1/LOI**

Governor Steven L. Beshear issued Executive Order 2008-011 in January 2008 that directed all Cabinets and agencies to implement cost savings measures. The EO1 process was established to implement the Order's provision regarding contracts and purchases.

The Letter of Intent (LOI) process was implemented in February 2011 to ensure PSCs are established only when necessary for services that cannot reasonably be performed by any other state agency or university. The EO1/LOI document is the eMARS form that is used for the review and approval of expenditures. The approved EO1/LOI must be attached to the header of the eMARS contract document.

### **Required Affidavit for Bidders or Offerors**

Agencies shall attach the signed and notarized Required Affidavit for Bidders or Offerors to the header of all contracts with non-governmental entities submitted for FAC review and approval. Any contract with a non-governmental entity without the required signed and notarized Affidavit attached will be rejected back to draft phase. The Affidavit is available on the FAC website at <http://eprocurement.ky.gov/attachments.htm> - [Attachment 2](#), and is also located in the Reference Documents of this manual. An [Affidavit FAQ](#) is also located in the Reference Documents..

### **PSC Template Information**

The Office of Procurement Services has created templates to assist agencies in the creation of RFP's and PSC's. These templates must be customized to allow the using agency to include their unique Scope of Work, Requirements, Evaluation Criteria, Proposal Submission Requirements and Agency Contact Information. The templates also incorporate all Required Terms and Conditions and Signature Lines.

The templates are available through the eMARS website, the OPS website; and located in the Reference Document Section on pages [42](#) and [59](#) of this manual. The templates are updated periodically. It is the agency's responsibility to ensure they are using the most recent version.

<http://finance.ky.gov/internal/eMARS/procurement.htm>

<http://finance.ky.gov/business/procurementservices/procurementhowto.htm>

### **Template Instructions**

Agencies should save a copy of the template to their local file system and make changes as needed for their RFP's and PSC's. Once the changes are complete, the template must be saved as an .xml document and uploaded into the Terms and Conditions of the eMARS RFP and /or PSC. When uploading the completed templates into the eMARS document, users should select the Free Form attachment type. The completed template should be attached to the document through the Action Menu as a Document XML. Users will need to be sure that the Blank Free Form document is deleted from the Attachments page after the document is uploaded. Make sure to incorporate your terms by full text so they will assemble into your document properly.

### **Time Required for PSC Review and Approval Process**

The review and approval process can be anywhere from three days to three weeks depending on the time of year. There is a significant increase in the volume of PSC's submitted at the beginning of a new fiscal year and the beginning of a new biennium. Agencies must allow sufficient time in their contracting process for the review and approval process to be completed. April, May and June of each year are particularly busy – agencies should allow up to three weeks for the review and approval process to be completed.

### **Exceptions to the PSC Process**

In some instances an agency may request an exemption from the RFP process (KRS 45A.695). Competitive exemption requests include:

- Sole source;
- Not Practicable or feasible to bid;
- Renewals;
- Time and Balance Extensions

These requests shall be submitted to the FAC on a LOI **regardless of the contract amount**. The request will be reviewed at the same time as the LOI. Agencies shall enter exemption request information in the "For Agency Use" field of the LOI. The requests shall include the following information:

- Vendor Name
- Contract Service Dates
- Contract Amount Per fiscal year including anticipated amendments;
- **Sole source** – Justification for the sole source;
- **Not Practicable or Feasible** – Explanation why bidding is not feasible;
- **Renewal** – Current contract number, language from original RFP allowing renewals;\*
- **Time and Balance Extension** – Explanation why the contract must be extended beyond the original expiration date.

***\* PSC's may ONLY be renewed if a renewal option was provided in the original RFP. Contracts awarded as a Sole Source or Not Practicable or Feasible to Bid may NOT be renewed because an RFP was not issued. A new Sole Source or Not Practicable or Feasible to Bid request is required.***

***PSC renewals MUST be completed PRIOR to the expiration date of the existing contract.***

## **Start Date Requests**

KRS 45A.695 requires PSC's to be filed with the Government Contract Review Committee prior to the effective date.

### **Emergency Start Date Requests**

There may be emergency situations where a vendor began work prior to the PSC being filed with the GCRC.

KRS 45A.690 - "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;

KRS 45A.095 - An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.

In emergency situations where a vendor began work prior to the PSC being filed with the GCRC, the agency is required to request an emergency start date. Emergency start date requests will be reviewed at the same time as the LOI. Agencies shall enter the emergency start date request information in the "For Agency Use" field of the LOI. Requests shall include the following:

- Name of Vendor.
- Contract service dates.
- Contract amount per year including anticipated amendments.
- An explanation as to why the vendor was allowed to provide services prior to the contract being filed with the GCRC.

### **Retroactive Start Date Requests**

In some instances, an agency may have allowed a vendor to begin work prior to the PSC being filed with the LRC GCRC although an emergency situation did not exist. An agency may request a retroactive start date for these types of PSC's; however, the LRC GCRC Committee staff is advised to scrutinize all such requests. Agencies are routinely required to testify before the GCRC regarding the late filing of their contracts. Agencies should make every effort to process contracts in a timely manner in order to eliminate these requests. Requests for

Retroactive Start Dates are processed the same as Emergency Start Date requests, and the same information is required.

If the LOI is approved, and the competitive bidding exemption or start date request is not approved, the agency will be notified to modify the EO1/LOI to remove the request for competitive exemption or start date.

**Agencies creating eMARS PON2 documents for which a competitive exemption or start date request was approved by FAC, shall clearly identify the type of request on the PON in the “Detailed Description of Work to be Performed”. The agency shall enter the type of request at the beginning of the field, in all CAPITAL LETTERS.**

### **PSC’s for Legal Services**

PSC’s for legal services require approval from the Governor’s Office of Legal Services prior to the issuance of an RFP. The LOI will not be approved if the Governor’s Office of Legal Services approval is not noted in the “Purpose and Justification.” Agencies should also attach documentation of the approval to the header or copy and paste in the document comments.

PSC’s for legal services also require eMARS approval from the Governor’s Office of Legal Services after the Finance Secretary’s approval and prior to filing with the GCRC. Agencies are advised to allow for the extra time in the review and approval process when creating PSC’s for legal services.

The GCRC has established Policy Statement 99-1 to establish the maximum rate paid for legal services. Agencies requesting approval to pay more than the maximum rate must send a written request to the GCRC co-chairs stating the reasons for exceeding the maximum rate schedule.

The request letter will be placed on the agenda for consideration at the next regularly scheduled GCRC meeting. The agency shall appear before the committee to answer any questions or provide additional information regarding the request.

### **PSC’s for Auditing Services**

**KRS 45.149** - No budget unit shall enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within fifteen (15) days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:

- (a) The certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts and to the Legislative Research Commission; and,
- (b) The Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.

A letter from the Auditor of Public Accounts declining to perform the audit must be attached to the header of the eMARS PON2.

The GCRC has established Policy Statement 99-5 to establish the maximum rate paid for auditing services. Agencies requesting approval to pay more than the maximum rate must send a written request to the GCRC co-chairs stating the reasons exceeding the maximum rate schedule. The request letter will be placed on the agenda for consideration at the next regularly scheduled GCRC meeting. The agency shall appear before the committee to answer any questions or provide additional information regarding the request.

## **PSC Modifications**

### **FAP 111-43-00-05**

Modification to a Personal Service Contract shall be processed in the same manner as the original contract in the state's procurement system. A modification shall be used if the parties to an established Personal Service Contract agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change

PSC Modifications must follow the same process as the original PSC. The modification is created in eMARS, new signatures are obtained, and the contract submitted in eMARS for review and approval by the Finance and Administration Cabinet and filing with the Government Contract Review Committee.

When processing Modifications, be sure to select the appropriate MOD form as the Default Form on the Header. Selecting the incorrect Default form or leaving the Default Form field blank triggers the automatic assembly of a new form when the final FAC approval is applied.

The Modification must include a brief statement in the Reason for Modification field on the header that describes why the contract is being modified. A statement that the funds are being increased or a reference to a commodity line is not sufficient; you must explain why the contract is being modified.

The Reason for Modification should be brief and clearly stated. The Reason for Modification becomes part of the contract and is reviewed by the GCRC and should provide them with an accurate understanding of the modification. The Reason for Modification is also available to the general public through the "Open Door" website.



**Reason for Modification Examples:****Example 1:**

Original Contract Amount - \$100,000.00

Amount of Increase - \$50,000.00

New Contract Total - \$150,000.00

Provide additional funding due to increased number of clients seeking services.

Original contract amount was based on services provided in previous years.

**Example 2:**

Extend contract for time and balance only to provide additional time for project completion. Contract is being extended from 08-30-10 to 09-30-10. No increase or decrease in funds.

**PSC Administrative Modifications**

Administration modifications are changes that do not affect the PSC. A change in an accounting code is considered an administrative modification. New signatures are not required for administrative modifications and they are not required to go before the GCRC. They must be finalized in eMARS.

Administrative Modifications must be clearly identified in the Reason for Modification.

**Administrative Modification Reason for Modification Example:**

ADMINISTRATIVE MODIFICATION ONLY to correct object code. No increase or decrease in funds. No change in scope.

**Vendor Name Changes**

When a vendor changes its name, eMARS will not allow the name to be changed on the contract. The existing contract must be terminated and a replacement contract created. The replacement contract amount must be for the remaining balance of the existing contract. The existing contract Reason for Modification must provide an explanation and it must reference the new contract number. The replacement contract must contain an explanation on the Commodity Line Extended Description and it must reference the old contract number.

**Example:****Existing Contract – Reason for Modification**

PON2 000 10\*0000 is being cancelled due to a vendor name change. PON2 000 10\*1111 has been created with the correct vendor name for the balance remaining on PON2 000 10\*0000 - \$75,000. No change in scope.

### **Replacement Contract – Commodity Line 1 Extended Description**

PON2 000 10\*1111 is created to replace PON2 000 10\*0000 due to a vendor name change. The contract amount of PON2 000 10\*1111 is the balance remaining on PON2 000 10\*0000 - \$75,000. No change in scope.

### **Proof of Necessity (PON)**

A Proof of Necessity (PON) statement is required for all PSC's. This document is where the information about the contract is recorded for review by the GCRC. The PON provides the following information about the contract:

- The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service.
- The total projected cost of the contract or agreement and source of funding.
- Details on payment information.
- Information on other vendors that were considered to provide the services to be rendered and the reason that the vendor being used was selected.
- A description of the services being provided.
- An explanation of the agency monitoring process.

### **PON Reminders**

- **PSC's with competitive bidding exemption or start date requests must identify the type of request in the Description of Work to be Performed. This must be entered at the beginning of the field, in ALL CAPS.**
- Source of funds identified must equal the contract total amount.
- If source of funds is "other", an explanation must be provided.
- Acronyms should be defined on the PON; the GCRC is not familiar with agency acronyms.
- Description of Work should be brief but fully explain the work being performed. Do not copy and paste the entire scope of work here.
- If PSC is for Legal Services, the court case number should be provided in the Description of Work.
- Award justification must be completed.
- EV Document number must be provided (if applicable)
- Agency contact name and telephone number must be provided. This is the name of the person the GCRC staff will contact if the agency is required to appear before the committee. DO NOT put the vendors name and telephone number here.

- If PSC is for Legal or Auditing Services, the hourly rate(s) should be listed in the Detailed Description of Projected Cost.
- If PSC is for Legal Services, the case number should be provided (if applicable)

## **PSC Negotiations**

FAP 111-43-00-01

- c. After determining the best proposal received, the agency may negotiate a fair and reasonable compensation with the selected vendor.

## **Frequently Asked Questions about Personal Services Contract Negotiations**

- 1. Can the agency negotiate on all Personal Services Contracts (“PSCs”), or only on PSCs generated through a Request for Proposals (“RFP”)?**

RESPONSE: All Personal Services Contracts, including sole-source contracts, can theoretically be negotiated, prior to contract signature/award.

- 2. What are the limitations on the negotiations process itself?**

RESPONSE: The agency must negotiate with the best evaluated (highest scoring) vendor first. If negotiations are unsuccessful with that vendor, then the agency may discontinue negotiations with that vendor and move on to the next highest-scoring vendor. However, the agency cannot go back and re-engage in discussions with a vendor with whom negotiations have been discontinued, so this decision should not be taken lightly.

- 3. Should the agency include the budgeted amount in an RFP?**

RESPONSE: **No.** Agencies should not include the budgeted amount in an RFP. KRS 45A.020(2)(f) requires that agencies provide for increased economy in state procurement activities by fostering effective competition. Disclosing the budgeted amount in an RFP upfront defeats the purpose of conducting a competitively negotiated procurement and does not demonstrate good stewardship of taxpayer dollars.

#### **4. What may be discussed with a vendor during negotiations?**

RESPONSE: The agency may discuss anything in the RFP or the specific vendor's response about which it has concerns, but it cannot provide a vendor with information about any other vendor's proposals. In other words, the agency may generally indicate that other vendors' have submitted a bid response, but cannot discuss specifics (i.e. how many other vendors bid, the names of the other vendors, or the specific solution or price proposed by another vendor).

#### **5. Do negotiations have to be face-face?**

RESPONSE: This depends on the complexity of the items being negotiated. A negotiation may be conducted over the telephone if the agency wishes to do so.

#### **6. What should the agency do if a vendor refuses to negotiate?**

RESPONSE: If a vendor refuses to negotiate, then the agency will have to determine whether it is in the best interests of the agency to continue with contract award to that particular vendor; or to discontinue negotiations with that vendor and move to the next.

#### **7. May an agency agree to a price increase during negotiations?**

RESPONSE: Generally, no. Typically, the price which a vendor proposes has been considered as part of the evaluation process, and establishes a ceiling for negotiation and not a floor (so price negotiations focus on a reduction in price and not an increase). There are limited exceptions to this, but if this situation occurs; the agency may wish to consult with the Finance and Administration Cabinet's Office of Procurement Services, prior to moving forward with increasing the price during negotiations.

#### **8. For price negotiations, should an agency simply ask a vendor to reduce their price by a certain amount?**

RESPONSE: Ideally, the agency should first ask a vendor to propose a lower price and task the vendor with the primary responsibility for coming back to the agency with a proposal for price reduction. However, if this approach is unsatisfactory, or if the agency is in a time-crunch, the agency may simply choose to ask the vendor to reduce their price by a certain amount or percentage.

**9. Should the agency attempt to negotiate, even if the highest scoring vendor's response to the solicitation already proposed a price which is within the agency's budget?**

RESPONSE: Yes. Simply asking the vendor to come down in price based on reduced agency budgets, etc. may result in cost savings.

**10. Certain PSCs, such as legal contracts, have pre-defined rates. Can the agency still negotiate price on such contracts?**

RESPONSE: Pre-defined rates are typically "not to exceed" rates, so the agency may choose to negotiate for and pay a lower rate.

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**GENERAL NEGOTIATION TIPS**

- Be willing to negotiate in the first place
- Set realistic goals for yourself
- Don't get emotionally involved
- Don't be rushed into making a decision
- Never be the first person to name a figure
- Don't act too interested (give the impression you're willing to walk away)

## **Common PSC Mistakes**

- Correct cited authority has not been selected on the document header. This must reflect the type of contract being created. The [Procurement Type/Document Code/Cited Authority Information sheet](#) located in the Reference Documents of this manual lists all PON2 and PO2 cited authorities available for use by all state agencies. Agencies creating a Grant Agreement should use the cited authority established specifically for the Grant.
- Correct Default Form has not been selected on the document header. The Default Form must match the Form Selected for the Assembled Document. If they do not match, the system will automatically create a new document to match the selected Default Form when the document goes to Final phase.
- The approved EO1/LOI has not been attached to the PON2 document header. You must attach the approved pdf version of the EO1/LOI. Do not attach a screen shot and do not attach a version that does not show the approval.
- The Required Affidavit for Bidders or Offerors attached to the header has not been notarized. This document must be notarized and if the vendor is out of state, the Notary seal must be on the document.
- The document has not been assembled. PSC's are required to be created in eMARS. The assembled document is the PSC. It must be assembled, printed and signed by the vendor and the agency prior to submission of the electronic version to the FAC.
- Verification of Foreign (out-of-state) corporations' registration with the Secretary of State must be provided. Agencies should enter Vendor's Organization Number issued by the SOS on the PON in the Basis for Selection section.
- The wrong Commodity Code has been selected. Commodity Codes must reflect the service being provided. Agencies are discouraged from using Miscellaneous Professional Services or Miscellaneous Services.
- Service from and Service to dates on multiple commodity lines are different. If the contract contains multiple commodity lines, the service from and service to dates on each line must be for the entire contract period.
- Dates entered on the commodity line cross the biennium. This violates GCRC policy statement 99-4.

- The PON contains acronyms. The GCRC is not familiar with each state agencies acronyms; agencies should not use acronyms unless they have first been defined on the PON.
- PON source of funds is other and no explanation is provided. If the source of funds identified on the PON is “other”, an explanation of the source must be provided.
- Contract Cost Information provided on the PON is incomplete. Agencies must provide a description of the contract cost and explain how payments are to be made.
- The Name and Address of other providers considered is not on the PON. This information is required. The Vendor name, city and state are sufficient. If no other vendors were considered, explain why not.
- The Basis for Selection is incomplete. Agencies must explain how the vendor was selected and must provide the RFP number and EV number (if applicable) and Secretary of State Organization number (if applicable).
- The wrong person is listed as the contact on the PON or a reference to “see contract header is entered”. The agency must provide the name and telephone number of the person GCRC staff should contact if the agency is required to appear before the committee.

## **PSC Checklist**

- \_\_\_\_\_ Approved EO1/LOI attached
- \_\_\_\_\_ Signed and Notarized Required Affidavit for Bidders or Offerors attached
- \_\_\_\_\_ Correct Default Form selected
- \_\_\_\_\_ Correct Cited Authority selected
- \_\_\_\_\_ Reason for Modification is completed (if applicable)
- \_\_\_\_\_ Applicable Commodity Code(s) selected
- \_\_\_\_\_ Contract service dates – Service From Date allows time for review, approval and filing with the GCRC and Service To Date is within the current biennium
- \_\_\_\_\_ Vendor – if vendor is a Foreign (out of state) corporation, the Organization number from the SOS database verifying they are Active and in Good Standing is entered on the PON.
- \_\_\_\_\_ Terms and Conditions – all required terms and conditions (most recently updated) are included in the assembled PON2.
- \_\_\_\_\_ PON – Description of Work to be Performed is brief and contains an accurate description of services provided. If PSC is for Legal services the court case number is provided.
- \_\_\_\_\_ PON- Planned Performance Monitoring Activities contains accurate description of how the agency will monitor the services being provided
- \_\_\_\_\_ PON- Source of Funds is accurate. If “other”, the source is identified
- \_\_\_\_\_ PON - Agency Paying FICA is checked yes (if applicable)
- \_\_\_\_\_ PON – Detailed Description of Projected Cost is completed and includes hourly rate(s) if contract is for Legal or Auditing Services
- \_\_\_\_\_ PON – Basis for Payment is completed
- \_\_\_\_\_ PON - Name/Address of Other Providers Considered are listed (if applicable) if no solicitation was issued, provide explanation of method of award
- \_\_\_\_\_ PON – Basis for Selection/PSC is completed with the RFP number, EV number (if applicable) and Sec. of State Org number (if applicable) included.
- \_\_\_\_\_ PON – Justification for Outside Provider is completed
- \_\_\_\_\_ PON – Contact information is provided for the person the GCRC should contact if the agency is required to appear before the GCRC or if additional information is required



# MEMORANDUM OF AGREEMENT (MOA'S)

## Memorandum of Agreement (MOA) Definition

**KRS 45A.690(1)(d)** "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782.

## MOA FAQ

- The statutes, policies and procedures governing MOA's are KRS 45A.690 – KRS 45A.725; FAP 111-44-00; 200 KAR 5:307 and 200 KAR 5:309. These are available on the FAC website; and in the Reference Document Section of this manual.  
<http://finance.ky.gov/business/eprocurement/state-laws.htm>
- MOA's are used to establish a contract with a public entity.
- MOA's do not have to go through a competitive process.
- MOA's are subject to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) review and approval unless exempt by statute or by an exemption granted by the GCRC.
- MOA's shall be filed with the GCRC **prior to** the effective date.  
**Retroactive start dates are not permissible for an MOA.**
- MOA's may not extend past the end of the biennium in which they are created unless there is statutory authority to do so; or by exemption granted by the GCRC.
- MOA's less than \$50,000 are exempt from routine GCRC review but must be filed with them for information purposes.

- MOA's less than \$50,000 must be filed with the GCRC no more than thirty (30) days after the effective date.
- MOA's are created as eMARS PON2 documents unless they are exempt from filing with the GCRC.
- MOA's exempt from filing with the GCRC are created as eMARS PO2 documents.

### **Public Entity (Definition)**

#### **61.870 Definitions for KRS 61.872 to 61.884.**

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

- (a) Every state or local government officer;
  - (b) Every state or local government department, division, bureau, board, commission, and authority;
  - (c) Every state or local legislative board, commission, committee, and officer;
  - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
  - (e) Every state or local court or judicial agency;
  - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
  - (g) Any body created by state or local authority in any branch of government;
  - (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;
  - (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
  - (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
  - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- of public records;

## **MOA Process Overview**

*EO1 – although not part of the MOA, EO1 approval is the first step in the MOA contracting process. .*

EO1's for MOA's less than \$25,000 are reviewed and approved by the agency.

EO1's for MOA's equal to or greater than \$25,000 are reviewed and approved by the weekly EO1 committee.

The MOA contracting process begins at the agency level with the creation of the MOA in the state'

Once an agency has created the MOA and obtained required signatures, the agency submits the MOA in the state's electronic procurement system, currently eMARS. Upon final eMARS approval at the agency level, the MOA enters the FAC, OPS worklist.

MOA's are reviewed by OPS to ensure that the using agency follows all policies, procedures and statutes that govern memorandum of agreements; that the correct procurement type, cited authority and terms and conditions have been used; and that the MOA has been created correctly in the eMARS system.

Once the review by OPS has been completed and the MOA shown to be in compliance, it is approved and routed to the Finance and Administration Cabinet, Office of the General Counsel (Finance Legal) for review and approval. If the MOA is not in compliance, it is rejected back to the submitter with instructions for correction.

Finance Legal reviews the MOA for accuracy and statutory compliance. If the MOA is shown to be in compliance, it is routed to the Finance Secretary's worklist for review and approval. If the MOA is not in compliance, it is rejected back to the submitter with instructions for correction.

Pursuant to KRS 45A.045(2), "No purchase or contract shall be binding on the state or any agency thereof unless approved by the Finance and Administration Cabinet or made under general administrative regulations promulgated by the Cabinet". KRS 45A.695 also requires that the Secretary of the Finance Cabinet or his designee has final approval over all Personal Service Contracts and MOAs for the purpose of overriding the committee or declaring an emergency.

Upon review and approval by the Finance Secretary designee, the MOA is routed to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) to await consideration pursuant to KRS 45A.705(4) for final review.

If the Finance Secretary designee does not approve the MOA, it is rejected back to the submitter with an explanation for the rejection.

## **GCRC MOA Process Overview**

Upon final FAC approval in eMARS, the MOA is automatically filed with the LRC GCRC via a database interface. MOA's in Final Phase in eMARS by the last business day of the month are placed on the following month's GCRC meeting agenda. The GCRC monthly meetings are typically the second Tuesday of the month, except during the Legislative session when it may be moved due to scheduling conflicts. The meeting time and location is posted on the GCRC website at:

<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

MOA's must be filed with the GCRC prior to the effective date.

GCRC staff may contact the person listed on the PON to ask questions concerning the MOA or to notify the agency to appear before the GCRC at the monthly meeting.

If the contract is denied by the GCRC, all contract activity must stop immediately.

Pursuant to KRS 45A.705, the agency may request the Secretary of the Finance and Administration Cabinet or his designee to determine if the MOA shall:

- (a) Be revised to comply with the objections of the committee;
- (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
- (c) Remain effective as originally approved.

The Secretary of the Finance and Administration Cabinet or his designee shall notify the committee of the action taken within ten (10) days from the date the MOA was reviewed by the committee.

## **MOA Terms and Conditions Requirements**

*\*[MOA Standard Terms and Conditions](#) are available in eMARS and in the Reference Documents Section of this manual.*

### **Terms and Conditions**

Pursuant to FAP 111-44-00, the MOA shall include the following:

- All terms and conditions agreed upon;

- The sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115;
- The statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485;
- The Legislative Research Commission (LRC) Proof of Necessity form;
- Language regarding access to documents required by 200 KAR 5:314;
- And language of KRS 45A.695(7) regarding payments and cancellation clause required by 45A.695(1).

In addition to the terms listed in FAP 111-44-00, the MOA shall include the following clauses:

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

*\*Additional information on Contract Workers at available at the following website:*  
<http://finance.ky.gov/business/procurementservices/procurementhowto.htm>

**MOA Required Attachments**

- Approved EO1 is required for any MOA over \$1,000. Must be attached to the header as a pdf.
- 501 (c)3 documentation from IRS is contracting with a non-profit on an MOA

**EO1**

Governor Steven L. Beshear issued Executive Order 2008-011 in January 2008 that directed all Cabinets and agencies to implement cost savings measures. The EO1 process has been established to implement the Order's provision regarding contracts and purchases. The EO1 document is the eMARS form that is used for the review and approval of expenditures.

MOA's (including Grants and University Agreements) less than \$25,000 are reviewed and approved at the agency level.

MOA's (including Grants and University Agreements) equal to or greater than \$25,000 are reviewed and approved by the FAC EO1 committee.

The approved EO1 must be attached to the header of the eMARS document.

### **Time Required for MOA Review and Approval Process**

The review and approval process can be anywhere from three days to three weeks depending on the time of year. There is a significant increase in the volume of MOA's submitted at the beginning of a new fiscal year, and the beginning of a new biennium. Agencies must allow sufficient time in their contracting process for the review and approval process to be completed. April, May and June of each year are particularly busy – agencies should allow up to three weeks for the review and approval process to be completed.

### **MOA Modifications**

#### **FAP 111-44-05**

Modification to a Memorandum of Agreement shall be processed in the same manner as the original document. A modification shall be used if the parties to an established agreement agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change

MOA Modifications must follow the same process as the initial MOA. The modification is created in eMARS, new signatures are obtained, and the contract submitted in eMARS for review and approval by the Finance and Administration Cabinet and filing with the Government Contract Review Committee.

When processing Modifications, be sure to select the appropriate MOD form as the Default Form on the Header. Selecting the incorrect Default form or leaving the Default Form field blank triggers the automatic assembly of a new form when the final FAC approval is applied.

The Modification must include a brief statement in the Reason for Modification field on the header that describes why the contract is being modified. A statement that the funds are being increased or a reference to a commodity line is not sufficient; you must explain why the contract is being modified.

The Reason for Modification should be brief and clearly stated. The Reason for Modification becomes part of the contract and is reviewed by the GCRC and should provide them with an accurate understanding of the modification.

**Reason for Modification Examples:**

**Example 1:**

Original Contract Amount - \$100,000.00

Amount of Increase - \$50,000.00

New Contract Total - \$150,000.00

Provide additional funding due to increased number of clients seeking services.

Original contract amount was based on services provided in previous years.

**Example 2:**

Extend contract for time and balance only to provide additional time for project completion. Contract is being extended from 08-30-10 to 09-30-10. No increase or decrease in funds.

**MOA Administrative Modifications**

Administration modifications are changes that do not affect the MOA. A change in an accounting code is an example of an administrative modification. New signatures are not required for administrative modifications and they are not required to go before the GCRC. They must be finalized in eMARS. Administrative Modifications must be clearly identified in the Reason for Modification.

**Administrative Modification Reason for Modification Example:**

ADMINISTRATIVE MODIFICATION ONLY to correct object code. No increase or decrease in funds. No change in scope.

**Vendor Name Changes**

When a vendor changes its name, eMARS will not allow the name to be changed on the contract. The existing contract must be terminated and a replacement contract created. The replacement contract amount must be for the remaining balance of the existing contract.

The existing contract Reason for Modification must provide an explanation and it must reference the new contract number. The replacement contract should contain an explanation on the Commodity Line Extended Description and it must reference the old contract number.

**Examples:****Existing Contract – Reason for Modification**

PON2 000 10\*0000 is being cancelled due to a vendor name change. PON2 000 10\*1111 has been created with the correct vendor name for the balance remaining on PON2 000 10\*0000 - \$75,000. No change in scope.

**Replacement Contract – Commodity Line 1 Extended Description**

PON2 000 10\*1111 is created to replace PON2 000 10\*0000 due to a vendor name change. The contract amount of PON2 000 10\*1111 is the balance remaining on PON2 000 10\*0000 - \$75,000. No change in scope.

**Proof of Necessity (PON)**

A Proof of Necessity (PON) statement is required for all MOA's. This document is where the information about the contract is recorded for review by the GCRC. The PON provides the following information about the contract:

- The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service.
- The total projected cost of the contract or agreement and source of funding.
- Details on payment information.
- Information on other vendors that were considered to provide the services to be rendered and the reason that the vendor being used was selected.
- A description of the services being provided.
- An explanation of the agency monitoring process.

**PON Reminders**

- Source of funds identified must equal the contract total amounts.
- If source of funds is "other", an explanation must be provided.
- Acronyms should be defined on the PON; the GCRC is not familiar with agency acronyms.
- Description of Work should be brief but fully explain the work being performed. Do not copy and paste the entire scope of work here.
- Award justification must be completed.
- Agency contact name and telephone number must be provided. This is the name of the person the GCRC staff will contact if the agency is required to appear before the committee. DO NOT put the vendors name and telephone number here.



## **Common MOA Mistakes**

- Correct cited authority has not been selected on the document header. This must reflect the type of contract being created. The [Procurement Type/Document Code/Cited Authority Information sheet](#) located in the Reference Documents of this manual lists all PON2 and PO2 cited authorities available for use by all state agencies. Agencies creating a Grant Agreement should use the cited authority established specifically for the Grant.
- Correct Default Form has not been selected on the document header. The Default Form must match the Form Selected for the Assembled Document. If they do not match, the system will automatically create a new document to match the selected Default Form when the document goes to Final phase.
- The approved EO1 has not been attached to the document header. You must attach the approved pdf version of the EO1. Do not attach a screen shot and do not attach the version that does not show the approval.
- The document has not been assembled. MOA's are required to be created in eMARS. The assembled document is the MOA. It must be assembled, printed and signed by the vendor and the agency prior to submission of the electronic version to the FAC.
- The wrong Commodity Code has been selected. Commodity Codes must reflect the service being provided. Agencies are discouraged from using Miscellaneous Professional Services or Miscellaneous Services.
- Service from and Service to dates on multiple commodity lines are different. If the contract contains multiple commodity lines, the service from and service to dates must all be for the entire contract period.
- Dates entered on the commodity line cross the biennium. This violates GCRC policy statement 99-4.
- The PON contains acronyms. The GCRC is not familiar with each state agencies acronyms; agencies should not use acronyms unless they have first been defined on the PON.
- PON source of funds is other and no explanation is provided. If the source of funds identified on the PON is "other", an explanation of the source must be provided.

- Contract Cost Information provided on the PON is incomplete. Agencies must provide a description of the contract cost and explain how payments are to be made.
- The Basis for Selection/Reason for Exchange is incomplete. Agencies must explain why the services are being provided by this particular provider.
- The wrong person is listed as the contact on the PON or a reference to “see contract header is entered”. The agency must provide the name and telephone number of the person GCRC staff should contact if the agency is required to appear before the committee.

## **MOA Checklist**

- \_\_\_\_\_ Approved EO1 attached
- \_\_\_\_\_ Correct Default Form selected
- \_\_\_\_\_ Correct Cited Authority selected
- \_\_\_\_\_ Reason for Modification is completed (if applicable)
- \_\_\_\_\_ Applicable Commodity Code(s) selected
- \_\_\_\_\_ Contract service dates – Service From Date allows time for review, approval and filing with the GCRC and Service To Date is within the current biennium
- \_\_\_\_\_ Terms and Conditions – all required terms and conditions (most recently updated) are included in the assembled PON2.
- \_\_\_\_\_ PON – Description of Work to be Performed is brief and contains an accurate description of services provided
- \_\_\_\_\_ PON- Planned Performance Monitoring Activities contains accurate description of how the agency will monitor the services provided
- \_\_\_\_\_ PON- Source of Funds is accurate. If “other”, the source is identified
- \_\_\_\_\_ PON - Agency Paying FICA is checked yes (if applicable)
- \_\_\_\_\_ PON – Detailed Description of Projected Cost is completed
- \_\_\_\_\_ PON – Basis for Payment is completed
- \_\_\_\_\_ PON - Name/Address of Other Providers Considered are listed (if applicable)
- \_\_\_\_\_ PON – Reason for Exchange/MOA is completed
- \_\_\_\_\_ PON – Contact information is provided for the person the GCRC should contact if the agency is required to appear before the GCRC or if additional information is required

## **University Agreements**

During the 2010 Regular Session, the Kentucky General Assembly enacted HB387 which impacts, among other things, the processing of University Agreements. The exemption to the definition of “memorandum of agreement” in KRS 45A.690(1)(d)(4) has been modified. Now, all agreements with public institutions of higher education where an employee or employees of the institution are performing or will perform duties that an employee or employees of state government could perform if hired are to be established as Memorandum of Agreements that will be filed with the Legislative Research Commission, Government Contract Review Committee.

### **KRS 45A.690(1)(d)**

"Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. **This definition does not apply to:**

**4. Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired,** and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;

### **University Exemption Request**

If a state agency believes that the Agreement with a public University is still exempt pursuant to KRS 45A.690(1)(d)(4), the agency shall request an exemption from the Secretary of the Finance and Administration Cabinet prior to the execution of the contract by submitting a letter to the Secretary of the Finance and Administration Cabinet designee, the OPS Executive Director, providing detailed justification of the exemption.

The letter should be submitted by email (preferred) or faxed directly to the OPS Professional Services Contract Administrator. If the request is approved, the

approval will be returned to the requesting agency. The agency shall attach the approved request letter to the electronic contract in eMARS. The agency contact will be notified if the request is denied.

### **University Agreement Reminders**

- University means a public institution of higher learning, not a private university or college. Contracts between a state agency and private universities or colleges are PSC's.
- University agreements not exempt from the definition of a MOA are created as PON2 MOA's in eMARS.
- University agreements approved by OPS as exempt from the definition of a MOA under KRS 45A.690(1)(d)4 are created as PO2 documents in eMARS.
  - eMARS Procurement type is 14.
  - Cited authority is KRS 45A.690(1)(d)4
- EO1 approval is required for any agreement over \$1,000 and must be attached to the document header.

## **REFERENCE DOCUMENTS**

**PSC RFP TEMPLATE**  
**Revised August 02, 2011**

INSTRUCTIONS TO AGENCY

CHANGE ONLY THE **HIGHLIGHTED** AREAS.

**REMOVE HIGHLIGHTING BEFORE ASSEMBLING YOUR FINAL SOLICITATION.**

SAVE DOCUMENT AS XML.

TABLES MUST BE FORMATTED AS TABLE GRID.

DO NOT USE SECTION BREAKS OR PAGE BREAKS.

UPLOAD COMPLETED DOCUMENT IN EMARS RFP TERMS AND  
CONDITIONS.

**COST SCORE SHOULD BE A MINIMUM OF 40% OF THE TOTAL POINTS**

DO NOT DELETE OR ALTER ANY LANGUAGE THAT IS NOT HIGHLIGHTED.

**DELETE THIS INSTRUCTION PAGE AND OTHER INSTRUCTIONS LOCATED  
WITHIN THE TEMPLATE BEFORE ASSEMBLING YOUR FINAL  
SOLICITATION**

**REQUEST FOR PROPOSAL  
FOR  
PERSONAL SERVICES CONTRACT**

**Name of Agency  
Title of RFP  
RFP Number**

This document constitutes a Request for Proposals for Personal Service Contract from qualified individuals and organizations to furnish those services as described herein for the Commonwealth of Kentucky, **Agency.**

**I. DESCRIPTION OF SERVICES REQUIRED**

Agency must describe in detail what it wants, specifications, timelines, deliverables, etc. Agency must be sure this section completely and accurately reflects its needs and requirements. .

**II. PERIOD OF PERFORMANCE**

This contract shall be effective upon filing with the Government Contract Review Committee and shall run through **June 30, 2012, the end of the current biennium.** The Commonwealth reserves the right to renew this contract for up to one (1) additional two (2) year period.

**III. INFORMATION AND DATA REQUIRED OF EACH OFFEROR**

Offerors shall submit a signed original proposal to **AGENCY** that includes the following information.

Please note that an authorized agent **MUST** complete and sign the Solicitation form. **Failure to sign shall render the bid invalid.**

**Electronic or Facsimile proposals shall not be considered.**

**AGENCY SHOULD CUSTOMIZE THIS LIST TO INCLUDE THE REQUIREMENTS THE VENDOR IS TO PROVIDE WITH THEIR PROPOSAL.- THE LISTED REQUIREMENTS ARE EXAMPLES AND INSTRUCTIONS.**

1. Name, Social Security Number or Federal Identification Number (FEIN), address, and telephone number. Provide e-mail address and website address, if available.

2. Provide professional references. Include names and addresses of



organizations with whom the offeror has previously contracted to provide similar services.

3. Previous experience. Include years of experience describe type of experience required. Specify years of experience as a describe type of experience required.
4. Qualifications and expertise. What are the qualifications and expertise required? Is the vendor required to submit resumes? List any other documentation required.
5. Any additional information required.
6. List any MANDATORY REQUIREMENTS.
7. Cost. Describe cost the vendor is to provide. What is included? Is anything excluded?

#### IV. RELATIVE IMPORTANCE OF PARTICULAR QUALIFICATIONS

Past Vendor Performance may be considered in the award of this Contract. Vendors with a record of poor performance in the last 12 months may be found non-responsive and ineligible for award.

After determining that a proposal includes all required information and data, the Agency will evaluate the proposal based on the following evaluation factors:

Agency to list evaluation factors and points assigned to each. Evaluation factors usually correspond with the information requested in Section II – Information and Data Required of Each Offeror.

##### Evaluation Factors and Points Assigned to Each

Evaluation Criteria.....	Points Possible
Previous experience	25 pts.
Qualifications and expertise	20 pts.
Sample training programs	15 pts.
Cost	40pts.
Total Points Possible	100

**Cost (40 Points)** – The proposal with the lowest Cost receives the maximum score. The proposal with the next lowest Cost receives points by dividing the lowest Cost by the next lowest price and multiplying that percentage by the available points.

The scoring of bids/proposals is subject to **Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410)**. Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.

**KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.**

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

**KRS 45A.492 Legislative declarations.**

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

**KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.**

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
  - (a) Is authorized to transact business in the Commonwealth; and
  - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of

the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

### **Determining the residency of a bidder for purposes of applying a reciprocal preference**

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

### **Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

Pursuant to 200 KAR 5:410, and KRS 45A.470, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation. In addition, the following "qualified bidders" will receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation: Kentucky Industries for the Blind, any nonprofit corporation that furthers the purposes of KRS Chapter 163 and any qualified nonprofit agencies for individuals with severe disabilities as defined in KRS 45A.465(3). Other than Kentucky Industries for the Blind, a bidder claiming "qualified bidder" status shall submit along with its response to the solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder- affidavit form included. If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

Agency reserves the right to conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

**After determining the best proposal received, the department reserves the right to negotiate a fair and reasonable compensation based on the pricing submitted in the offeror's proposal.** If the negotiations fail to reach an agreement on a fair and reasonable compensation rate, the department reserves the right to proceed to the next highest rated proposal.

## **V. GENERAL INFORMATION**

Offerors are advised that any personal service contract resulting from this Request for Proposals for Personal Service Contract must comply with all applicable provisions of KRS 45A and KRS 12.210 prior to becoming effective.

The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.

The Commonwealth reserves the right to request additional information as may reasonably be required for selection, and to reject any proposals for failure to provide additional information on a timely basis.

A contract, based on this RFP, may or may not be awarded. **Any contract award from this RFP is invalid until properly approved and executed by the Finance and Administration Cabinet.**

**Notification of Award** - To view the Award of Contract(s) and the Contractor(s) receiving the Award(s) for this Solicitation, access the **E-Procurement Directory** at <http://eprocurement.ky.gov>. The Award(s) information can be accessed by clicking on the View Awards link under the Procurement area located on the top of the center column of the E-Procurement Directory homepage. It is the vendor's responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided.

**Questions regarding this RFP** - Questions must be submitted in writing to the Agency contact named in this RFP. The Commonwealth will respond to salient questions in writing by issuing an Addendum to the Solicitation. The Addendum shall be posted to the Commonwealth's E-Procurement page.

**Access to Solicitation, RFP and Addenda** - The Solicitation, the RFP and Attachments and any Addenda shall be posted to the E-Procurement Directory at <http://eprocurement.ky.gov>

***It is the vendors' responsibility to assure they have obtained copies of all information and forms.***

## **Vendor Response and Public Inspection**

The RFP specifies the format, required information, and general content of proposals submitted in response to the RFP. The **Agency/Cabinet** shall not disclose any portions of the proposals prior to contract award to anyone outside the **Agency/ Cabinet**, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal Government, if required, and the members of the evaluation committees. After a contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by Vendors in response to this RFP as a matter of public record.

**Any and all documents submitted by a Vendor in response to the RFP shall be available for public inspection after contract award. No such documents shall be exempt from disclosure under the Kentucky Open Records Act regardless of the vendor's designation of the information contained therein as proprietary, confidential, or otherwise. Therefore, the Commonwealth will not redact or withhold any documents submitted in response to the RFP if a request to inspect these records is made.**

The Commonwealth of Kentucky shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejections of the proposal will not affect this right.

**Additional Requirements** – Vendors should review and comply with the general bidding requirements listed under “Laws, Policies and Procedures” and “Standard Attachments and General Terms” located on the eProcurement Web page at <https://eprocurement.ky.gov>.

## **Certification Regarding Debarment and Suspension**

In accordance with Federal Acquisition Regulation 52.209-5, the Vendor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Vendor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency.

"Principals", for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

## **Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award , shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto.
4. PSC Standard Terms and Conditions;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation;
7. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

## **VI. RESPONSES**

Electronic or Facsimile Proposals shall not be accepted.

Proposals submitted in response to this Request for Proposals for a Personal Service Contract must be received in hardcopy form no later than **4:30 p.m. Eastern Daylight Savings Time on Monday, July 25, 2011.** Proposals which arrive after this date and time shall not be considered for an award of contract, unless: a) no bids are received other than the late bid; and b) the need of an agency is determined to preclude the re-solicitation of bids; and c) the offer is evaluated and found to be in the best interest of the Commonwealth.

One (1) marked Original Proposal and **(#) Number of Copies** shall be submitted to:

**Agency Contact Name**  
**Agency Contact Address**  
**Agency Contact Telephone Number**

**The outside cover of the package containing the Proposals shall be marked:**

**Title of Solicitation**  
**RFP number**  
**Name of Offeror**

## **VII. RESTRICTIONS ON COMMUNICATIONS**

The Contract Contact named below shall be the **sole point of contact** throughout the procurement process. All communications, oral and written

(regular mail, express mail, electronic mail, or fax), concerning this procurement shall be addressed to:

**Agency Contact Name**  
**Agency Contact Address**  
**Agency Contact Telephone Number**  
**Agency Contact Fax Number**  
**Agency Contact Email Address**

From the issue date of this RFP until a Contractor(s) is selected and the selection is announced, Offerors are not allowed to communicate with any Commonwealth Staff concerning this RFP except:

The Contract Contact cited in this RFP; or  
Via written questions submitted to the Contract Contact

***For violation of this provision, the Commonwealth shall reserve the right to reject their proposal response.***

#### **ITEMS THAT SHALL BE SUBMITTED WITH YOUR BID**

1. **SIGNED SOLICITATION INCLUDING YOUR CORRECT ADDRESS, REMIT TO ADDRESS AND FEDERAL TAX IDENTIFICATION NUMBER.**
2. **SIGNED ADDENDUMS (IF APPLICABLE)**
3. **SIGNED AND NOTARIZED REQUIRED AFFIDAVIT FOR BIDDERS OR OFFERORS (AVAILABLE AT THE FOLLOWING LINK):**  
<http://eprocurement.ky.gov/attachments.htm>
4. **SIGNED AND NOTARIZED REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING QUALIFIED BIDDER STATUS (IF APPLICABLE.) (AVAILABLE AT THE FOLLOWING LINK)**  
<http://finance.ky.gov/business/procurementservices/procurementhowto.htm>
5. **SIGNED AND NOTARIZED REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING RESIDENT BIDDER STATUS (IF APPLICABLE) (AVAILABLE AT THE FOLLOWING LINK)**  
<http://finance.ky.gov/business/procurementservices/procurementhowto.htm>
6. **CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH (IF APPLICABLE)**

#### **PSC Standard Terms and Conditions**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

**Whereas**, the second party, the contractor, is available and qualified to perform such function;  
and  
**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**Effective Date:**

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**Cancellation:**

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

**Authorized to do Business in Kentucky:**



The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

**Registration with the Secretary of State by a Foreign Entity.**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

**Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

**Other expenses, if authorized herein:**

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any

- other miscellaneous expenses.
- Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

**Purchasing and specifications:**

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

**Conflict-of-interest laws and principles:**

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**Campaign finance:**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Access to Records:** The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

**Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**Lori H. Flanery, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone #: (502) 564-4240  
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**Social security: (check one)**

\_\_\_\_\_ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**Discrimination:**

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**END OF RFP**

**PSC AWARD TEMPLATE**  
**Revised August 08 2011**

Instructions to Agency

Change only the Highlighted Areas

**Remove Highlighting before assembling your final contract in eMARS.**

Save document as XML.

Tables must be formatted as Table Grid.

Do not use section breaks or page breaks.

Upload completed document in eMARS terms and conditions

Do Not Delete or Alter any language that is not highlighted.

**Remove this instruction page from the final contract.**

PERSONAL SERVICE CONTRACT FOR  
**RFP TITLE**

BETWEEN

THE COMMONWEALTH OF KENTUCKY  
**AGENCY**  
AND

**VENDOR NAME /ADDRESS/CONTACT INFO**

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, **Agency** ("the Commonwealth") and **Vendor** to establish a Contract for **RFP Title**. This PSC is effective **MM/DD/YYYY** and expires **MM/DD/YYYY**.

The Commonwealth and Contractor agree to the following:

**I. Scope of Contract**

**From the RFP., usually Section I. Description of Services Required. Change RFP language to Contract language.**

**II. Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid Contract between the Parties consisting of the following:

Any written Agreement between the Parties;  
Any Addenda to the Solicitation;  
The Solicitation and all attachments thereto; including PSC Standard Terms and Conditions;  
Any Best and Final Offer;  
Any clarifications concerning the Contractor's proposal in response to the Solicitation;  
The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

**III. Negotiated Items**

**Insert those items that were negotiated or any exceptions the vendor made and the Commonwealth agreed to. If no negotiated items, state Not Applicable.**

#### IV. Pricing

Insert Contract Amount and applicable payment information such as hourly rate and number of hours, not to exceed amounts or Budget Information.

If hourly rate is being paid, but is not entered on the commodity line, the agreed upon hourly rate should be shown in the commodity line extended description, even if the agreed upon rate is set by the Commonwealth.

Example 1: if a contract is established for a not to exceed amount of \$10,000 for legal services, agency should state in the commodity line extended description that an hourly rate of \$125 is being paid.

Example 2: if a contract is established as not to exceed \$10,000 for investigative services, agency should state in the commodity line extended description that an hourly rate of (agreed upon amount\$\$) is being paid for an estimated ### number of hours.

Example 3: If a contract is established with a total amount and the amount is based on an agreed upon budget, the budget amounts should be shown in the commodity line extended description.

#### V. Personal Service Contract Standard Terms and Conditions

##### PSC Standard Terms and Conditions

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

Whereas, the second party, the contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

##### **Effective Date:**

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

##### **Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the

Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**Cancellation:**

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

**Authorized to do Business in Kentucky:**

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

**Registration with the Secretary of State by a Foreign Entity.**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**



Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx> .

**Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the Government Contract Review Committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website:

<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

**Other expenses, if authorized herein:**

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.

Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

**Purchasing and specifications:**

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

**Conflict-of-interest laws and principles:**

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**Campaign finance:**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Access to Records**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

**Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**Lori H. Flanery, Secretary**

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone #: (502) 564-4240  
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**Social security: (check one)**

\_\_\_\_\_ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

**Contractor must check one:**

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**Discrimination:**

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post

in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## VI. Approvals

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

1st Party:

_____ Signature	_____ Title
--------------------	----------------

_____ Printed Name	_____ Date
-----------------------	---------------

2nd Party:

_____ Signature	_____ Title
--------------------	----------------

_____ Printed Name	_____ Date
-----------------------	---------------

Other Party

_____ Signature	_____ Title
--------------------	----------------

_____ Printed Name	_____ Date
-----------------------	---------------

Approved as to form and legality:

\_\_\_\_\_  
Attorney

**PSC Standard Terms and Conditions**  
**Revised August 08, 2011**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

**Whereas**, the second party, the contractor, is available and qualified to perform such function; and

**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**Effective Date:**

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the

Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**Cancellation:**

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

**Authorized to do Business in Kentucky:**

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

**Registration with the Secretary of State by a Foreign Entity.**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in

[KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

**Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website:

<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

**Other expenses, if authorized herein:**

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous



expenses.

- Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

**Purchasing and specifications:**

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

**Conflict-of-interest laws and principles:**

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**Campaign finance:**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Access to Records:** The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other

evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

**Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**Lori H. Flanery, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone #: (502) 564-4240  
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**Social security: (check one)**

\_\_\_\_\_ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within

the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**Discrimination:**

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing

such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Memorandum of Agreement Terms and Conditions  
Revised 31August 2010

Scope of Services:  
(Agency to complete)

Cancellation clause:  
Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Funding Out Provision:  
The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

Effective Date:

All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract

review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

#### Violation of tax and employment laws

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

**This page intentionally left blank.**



## **GCRC REQUEST LETTER TIP SHEET**

### **Type of Request Procedure**

#### **Exemption from LRC routine review**

- Submit letter to the LRC GCRC co-chairs (send to Committee Staff Administrator Kim Eisner) requesting an exemption from routine review.
- Request should be specific.
- Request will be placed on GCRC meeting agenda and committee will address at the meeting.
- Determination will be sent to the agency along with any reporting requirements.

#### **Exemption from biennial contracting requirements - Policy statement 99-4**

- Submit letter to the LRC GCRC co-chairs (send to Committee Staff Administrator Kim Eisner) requesting an exemption from biennial contracting requirements. Request should be specific.
- Request will be placed on GCRC meeting agenda and committee will address at the meeting.
- Determination will be sent to the agency along with any reporting requirements.

Date

Lori H. Flanery, Secretary  
Finance and Administration Cabinet

Through Don Speer, Executive Director, Office of Procurement Services

**RE: Request for University Exemption for University of Kentucky Internet Services to KET**

Dear Secretary Flanery:

**Purpose:** The Kentucky Authority for Educational Television (KET) requests to enter into an agreement with the University of Kentucky to provide primary internet services to the KET Network Center in Lexington, KY.

**Background:** Since June 1, 2008, KET's primary internet service has been provided by the University of Kentucky.

**Score of Work and Responsibilities:** the University of Kentucky provides expressed bandwidth of 50 mbps and includes an additional internet 2 (12) connection of 10 mbps, a redundant secondary internet access, and video conferencing and bridging to the KPEN/KEN statewide network. The agreement with the University of Kentucky also provides for replacement of existing network hardware and connectivity.

**Duration of Agreement/Funding:** This contract is for the period 7/1/2011 through 6/30/2012. The total of this contract is \$28,517. The funding is 100% General Fund.

**Justification:** Through discussions with COT, it was determined that establishing a similar service through the state contract with BellSouth was difficult due to KET's Lexington Network Center being services exclusively by Windstream lines. It is considerably more costly for BellSouth, Windstream and Open World to provide the same services offered by the University of Kentucky.

Your favorable consideration of this request is greatly appreciated. Should you need additional information, please contact Kelly Graves at 859-258-7108

Sincerely,

Donna Verhoeven  
Senior Director, Administration and Finance

Cc: Kathy Robinson, OPS  
Kelly Graves  
Fred Engel



STEVEN L. BESHEAR  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2008-011  
January 4, 2008

**AN ORDER FROM THE GOVERNOR**  
**TO ALL STATE AGENCIES TO IMMEDIATELY**  
**REDUCE COSTS**

**WHEREAS**, it is currently projected that, as a result of reduced revenues, increased expenditures, and the current downturn in the economy, the Commonwealth's projected General Fund budget shortfall will be over \$400 million in the current Fiscal Year, Fiscal Year 2008; and

**WHEREAS**, it is currently projected that General Fund revenues for Fiscal Years 2009 and 2010 will be less than enacted appropriations for Fiscal Year 2008:

**NOW, THEREFORE**, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution and in particular Sections 69 and 81, and Chapters 12 and 47 and as further invested in me by the laws of the Commonwealth, do hereby FIND, DECLARE, ORDER and DIRECT the following:

1. This Executive Order applies to all program cabinets and agencies of the Commonwealth of Kentucky and administrative bodies under the authority of the Executive Branch of the government by the Commonwealth of Kentucky as provided in KRS Chapter 12 *et. seq.*
2. This Executive Order shall serve as a directive to all Executive Branch Cabinets and agencies to implement cost saving measures immediately to assist in closing the deficit faced by the Commonwealth in the current fiscal year. All cabinets and agencies, including those which do not receive General Funds, are directed to



STEVEN L. BESHEAR  
GOVERNOR

EXECUTIVE ORDER

2008-011  
January 4, 2008

Secretary of State  
Frankfort  
Kentucky

comply with these measures to result in consistent management of state resources in these difficult fiscal times.

**REDUCE THE STATE WORKFORCE THROUGH ATTRITION**

3. The size of the workforce will be reduced through attrition. All hiring actions must be justified as essential to the delivery of services and that funds are available to sustain the position within reduced budgeted amounts. All personnel actions must be justified and approved by the Secretary of the Governor's Executive Cabinet prior to submission to the Personnel Cabinet for processing. This includes approval of actions that increase costs for existing personnel.

**REVIEW ALL CONTRACTS FOR COST SAVINGS**

4. All new contracts, including personal service contracts and leases, must be justified as essential to the delivery of services and must demonstrate that the service cannot be provided with existing personnel. All existing contracts shall be reviewed for cost savings and potential elimination. The Secretary of the Finance and Administration Cabinet must approve all new and amended contracts.

**REDUCE TRAVEL EXPENSES**

5. All state agencies are directed to reduce travel expenses. All out-of-state travel must be approved by the Secretary of the Finance and Administration Cabinet, and all in-state travel must be approved by the Secretaries of the respective Executive Branch agencies. Efforts to reduce the travel expenses incurred by state agencies shall include the following:
  - o The Finance and Administration Cabinet shall make all efforts to make the state fleet more cost efficient.



STEVEN L. BESHEAR  
GOVERNOR

EXECUTIVE ORDER

2008-011  
January 4, 2008

Secretary of State  
Frankfort  
Kentucky

- o Given the increasing cost of gasoline, all opportunities for work-related carpooling shall be maximized.
- o The number of employees approved to attend the same conference shall be scrutinized and reduced where possible.
- o State agencies are directed to use video conferencing available at state facilities, in lieu of travel whenever feasible.
- o State agencies are directed to require that state employees approved for in-state overnight travel shall use state park facilities when such accommodations are within 25 miles of their business destination.

**REDUCE PRINTING COSTS**

6. State agencies are directed to maximize use of electronic methods of communication to minimize printing costs. For printing deemed essential, state agencies are directed to submit all printing requests to the state's Division of Printing Services for review to ensure printing is accomplished in the most cost efficient manner possible.

**CURTAIN EQUIPMENT AND FURNITURE PURCHASES**

7. A moratorium is placed on all purchases of furniture and equipment by state agencies. Agencies with critical needs in this regard must justify those needs to the Secretary of the Finance and Administration Cabinet, who may approve exceptions if conditions warrant.

**SELL SURPLUS PROPERTY**

8. State agencies are directed to immediately review their inventories of state owned assets such as real property, equipment, furniture and vehicles, and to work with the Finance and Administration Cabinet Division of Surplus Property as to use their delegated authority to dispose of surplus property, thereby generating cash for operations of state government.



STEVEN L. BESHEAR  
GOVERNOR

EXECUTIVE ORDER

2008-011  
January 4, 2008

Secretary of State  
Frankfort  
Kentucky

**REDUCE DISCRETIONARY EXPENDITURES**

9. State agencies are directed to review and implement feasible cost saving actions in all areas of spending. This review specifically includes telecommunications, office supplies, commodities, dues, and subscriptions.

**MAXIMIZE OPPORTUNITIES FOR ENERGY SAVINGS**

10. The Secretary of the Finance and Administration Cabinet is directed to work with all state agencies to identify strategies to reduce or mitigate increasing utility costs.

**COMPLIANCE**

11. Kentucky's constitutional officers and management employees of the Commonwealth's elementary, secondary and post-secondary educational systems, and other agencies governed by boards, commissions, and other statutorily created administrative bodies are strongly encouraged to carefully review the provisions of this Order and implement similar cost cutting measures set forth herein as a part of the effort of the government of the Commonwealth of Kentucky to immediately achieve greater efficiencies in the provision of state services and reductions and expenditures in light of the current condition of the budget of the Commonwealth.
12. The provisions of this Order shall remain in full force and effect until sooner rescinded or superseded by subsequent Executive Order or by legislative enactment.



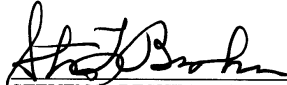
STEVEN L. BESHEAR  
GOVERNOR


EXECUTIVE ORDER

2008-011  
January 4, 2008

Secretary of State  
Frankfort  
Kentucky

13. This Order shall become effective immediately upon filing with the Secretary of State.

  
STEVEN L. BESHEAR, Governor  
Commonwealth of Kentucky

  
TREY GRAYSON  
Secretary of State

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**PAGE 1 OF 2**

**FOR BIDS AND CONTRACTS IN GENERAL:**

- I. Each bidder or offeror swears and affirms under penalty of perjury, that:
- a. In accordance with [KRS 45A.110](#) and [KRS 45A.115](#), neither the bidder or offeror as defined in [KRS 45A.070\(6\)](#), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
  - b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in [KRS 45A.485](#); have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
  - c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by [KRS Chapter 139](#), and will remain registered for the duration of any contract awarded.
  - d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

**FOR “NON-BID” CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS, ETC):**

- II. Each contractor further swears and affirms under penalty of perjury, that:
- a. In accordance with [KRS 121.056](#), and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in [KRS 121.150](#) to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.
  - b. In accordance with [KRS 121.330\(1\) and \(2\)](#), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.



**Solicitation/Contract #:** \_\_\_\_\_

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**PAGE 2 OF 2**

- c. In accordance with [KRS 121.330\(3\) and \(4\)](#), and if this is a non-bid contract, to the best of his/her knowledge, neither the contractor, nor any member of his/her immediate family, his/her employer, or his/her employees, or any entity affiliated with any of these entities or individuals, have directly solicited contributions in excess of \$30,000 in the aggregate for the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract.

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.

\_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me  
by

\_\_\_\_\_  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public

[seal of notary]

My commission expires: \_\_\_\_\_

## **Frequently Asked Questions about the Required Affidavit for Bidders, Offerors, and Contractors**

### **What must the affidavit be executed for?**

- Competitive bids for goods, commodities, non-professional services, or professional services (signed by all bidders).
- Noncompetitively negotiated contracts (i.e. any sole source, not practical or feasible to bid, or emergency contracts) (signed by contractor, since no bid)
- Small purchase awards, to include transactions without a written contract (over \$1000). (If taking quotes, must be signed by awarded contractor only, and notarized.)
- Stand alone payments (PRCs). (Must be signed by the authorized company representative, and notarized.)

**All Affidavits must be notarized in all circumstances, as the notary is witnessing the signature of the individual who is swearing under penalty of perjury.**

### **What does the affidavit not have to be executed for?**

- Stand-alone payments for GAX, such as utilities, court-ordered payments, postage.
- Procard payments.
- Purchases off Master Agreements (The affidavit will be obtained when MA is established and the agencies do not need to obtain affidavits for each individual purchase off an existing Master Agreement).
- Agreements between governmental agencies.
- Payments for dues, subscriptions.
- TP's for reimbursements to employees.
- Purchases or stand alone payments in amounts less than, or equal to \$1000. Procurement requirements can not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure.

### **Why is FAC making this change?**

- The Campaign Finance requirement has been in statute – KRS 45A.110 since 1992. The Finance and Administration Cabinet already requires that this form be signed and notarized for FAC contracts, and our legal office has advised that the form should also be executed for other agency contracts and small purchase as a matter of law.

Does this apply to renewals?

- Yes. When a contract (competitive or non-competitive) is renewed for another term, the affidavit should be re-executed as of the date of renewal.

Does this apply to contract modifications?

- No. The affidavit does not need to be re-executed each time a contract modification is done.

Do we have to modify existing contracts, which do not have the affidavit, just to add the affidavit?

- No. However, as existing contracts are modified for other reasons, the buyers should go ahead and have the vendor execute the affidavit at the same time.

Does the executed affidavit need to be attached to the contract in eMARS?

- PON2s do require it to be attached at the header. For all other eMARS documents, it is not necessary, but would be preferable from an auditing perspective. The agency can choose to just keep the original affidavit on file.

Can we accept an email and/or faxed copy of the affidavit or does it have to be an original?

- We can accept faxes or scanned and emailed affidavits, as long as they have been signed and notarized and as long as it is not for an out-of-state vendor (which requires an actual notary seal).

Are prior arrangements exempt from the affidavit process?

- No – these would not be exempt.

We have been asked by several vendors if the cost of getting the affidavits notarized can be passed along to the state?

- No – it is part of them doing business with the Commonwealth.

If a vendor violates a part of the Affidavit, what action can be taken?

- Action could be taken against a vendor as indicated at the bottom of the affidavit: “failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.”

## SENATE MEMBERS

**David L. Williams**  
President, LRC Co-Chair  
**Katie Kratz Stine**  
President Pro Tem  
**Robert Stivers**  
Majority Floor Leader  
**Ed Worley**  
Minority Floor Leader  
**Dan Seum**  
Majority Caucus Chair  
**Johnny Ray Turner**  
Minority Caucus Chair  
**Carroll Gibson**  
Majority Whip  
**Jerry P. Rhoads**  
Minority Whip

## LEGISLATIVE RESEARCH COMMISSION

State Capitol      700 Capitol Avenue      Frankfort KY 40601

502-564-8100

Capitol FAX 502-223-5094  
Annex FAX 502-564-6543  
lrc.ky.gov

**Robert Sherman**  
Director

## HOUSE MEMBERS

**Gregory D. Stumbo**  
Speaker, LRC Co-Chair  
**Larry Clark**  
Speaker Pro Tem  
**Rocky Adkins**  
Majority Floor Leader  
**Jeff Hoover**  
Minority Floor Leader  
**Robert R. Damron**  
Majority Caucus Chair  
**Bob DeWeese**  
Minority Caucus Chair  
**John Will Stacy**  
Majority Whip  
**David Floyd**  
Minority Whip

### Memorandum:

To:                    Agencies and Entities Filing Contracts with the Government Contract  
Review Committee

From:                Kim M. Eisner, Committee Staff Administrator  
Government Contract Review Committee

Re:                    Contracts with Foreign (out-of-state) Corporations

Date:                 June 18, 2010

The Government Contract Review Committee has directed committee staff to inform all agencies and entities filing contracts with the committee that it will not consider any contract between an agency and an out-of-state corporate contractor that is not properly registered with the Kentucky Secretary of State or, if appropriate, the Department of Revenue. Foreign Corporations are required to register with the Secretary of State pursuant to KRS 271B.15-010. That statute states "[a] foreign corporation...shall not transact business in this state until it obtains a certificate of authority from the Secretary of State." The requirements for registration with the Department of Revenue are found at KRS 45A.067.

Up to this point, contracts between agencies and unregistered foreign corporations have been deferred by the committee until such time as the corporate contractor complies with the registration requirements. The committee has indicated that agencies are subject to having their contracts disapproved if their foreign corporate contractors fail to comply after several months of the committee deferrals.

The effect of a deferral means no payments may be made on a contract until such time as the contract is reviewed by the committee. If a contract is disapproved, the contract is cancelled unless the Secretary of the Finance Cabinet overrides the committee's decision.

Agencies and entities are responsible for alerting committee staff of changes to a foreign corporation's registration status. Please direct any questions regarding registration requirements to the Office of the Secretary of State or the Department of Revenue.

# Kentucky Preference Laws

The scoring of bids/proposals is subject to **Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries.**

## **Reciprocal preference for Kentucky resident bidders**

### **KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.**

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

### **KRS 45A.492 Legislative declarations.**

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

### **KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.**

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
  - (a) Is authorized to transact business in the Commonwealth; and
  - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.
- (7) The preference for resident bidders shall not be given if the preference conflicts with federal law.
- (8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

**Determining the residency of a bidder for purposes of applying a reciprocal preference**

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

**Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries.**

Pursuant to 200 KAR 5:410, and KRS 45A.470, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation. In addition, the following "qualified bidders" will receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation: Kentucky Industries for the Blind, any nonprofit corporation that furthers the purposes of KRS Chapter 163 and any qualified nonprofit agencies for individuals with severe disabilities as defined in KRS 45A.465(3). Other than Kentucky Industries for the Blind, a bidder claiming "qualified bidder" status shall submit along with its response to the solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder- affidavit form included. If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

Solicitation/Contract #: \_\_\_\_\_

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**CLAIMING RESIDENT BIDDER STATUS**

**FOR BIDS AND CONTRACTS IN GENERAL:**

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

1. Is authorized to transact business in the Commonwealth;
2. Has for one year prior to and through the date of advertisement
  - a. Filed Kentucky corporate income taxes;
  - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
  - c. Maintained a Kentucky workers' compensation policy in effect.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

\_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public

[seal of notary]

My commission expires: \_\_\_\_\_

Solicitation/Contract #:

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**CLAIMING QUALIFIED BIDDER STATUS**  
**FOR BIDS AND CONTRACTS IN GENERAL:**

I. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, and all subcontractors therein, meets the requirements to be considered a "qualified bidder" in accordance with [200 KAR 5:410\(3\)](#); and will continue to comply with such requirements for the duration of any contract awarded. Please identify below the particular "qualified bidder" status claimed by the bidding entity.

\_\_\_\_\_ A nonprofit corporation that furthers the purposes of KRS Chapter 163

\_\_\_\_\_ Per KRS 45A.465(3), a "Qualified nonprofit agency for individuals with severe disabilities" means an organization that:

- (a) Is organized and operated in the interest of individuals with severe disabilities; and
- (b) Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and
- (c) In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and
- (d) Is registered and in good standing as a nonprofit organization with the Secretary of State.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of qualified bidder status. Failure to provide such documentation upon request may result in disqualification of the bidder or contract termination.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public

[seal of notary]

My commission expires: \_\_\_\_\_



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**45A.690 Definitions for KRS 45A.690 to 45A.725.**

(1) As used in KRS 45A.690 to 45A.725:

(a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;

(b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;

(c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;

(d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:

1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
3. Agreements between state agencies as required by federal or state law;
4. Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
5. Agreements involving child support collections and enforcement;
6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
7. Nonfinancial agreements;
8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
9. Exchanges of confidential personal information between agencies;
10. Agreements between state agencies and rural concentrated employment programs; or
11. Any other agreement that the committee deems inappropriate for consideration;

(e) "Motion picture or entertainment production" means the same as defined in KRS 148.542;

(f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;

(g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:

1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;

2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;

3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;

4. Agreements between a state agency and rural concentrated employment programs;

5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; or

6. Any other contract that the committee deems inappropriate for consideration; (h)

"Tax incentive agreement" means an agreement executed under KRS 148.546; and

(i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.

(2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

**Effective:** April 5, 2010

**History:** Amended 2010 Ky. Acts ch. 55, sec. 3, effective April 5, 2010. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 48, effective June 26, 2009. -- Amended 2005 Ky. Acts ch. 99, sec. 107, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 486, sec. 2, effective July 15, 1998. -- Created 1990 Ky. Acts ch. 496, sec. 14, effective July 13, 1990.

**45A.695 Personal service contract procedures -- Tax incentive agreements.**

(1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

(2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:

(a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;

(b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;

(c) The total projected cost of the contract or agreement and source of funding;

(d) The total projected duration of the contract or tax incentive agreement;

(e) Payment information, in detail;

(f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and

(g) Such other information as the committee deems appropriate.

(3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, state the relative importance of particular qualifications, and include the reciprocal preference for resident bidders required by KRS 45A.494.

(4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

(6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements,

and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.

(7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

(8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.

(9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

(10) (a) No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

(b) Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.

(c) Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.

(d) Each invoice shall contain the following information: 1. A description of the matter covered by the invoice;

2. The date each service was performed;

3. A full description of each service;

4. The name and title of each individual who worked on the matter, and the time the individual spent on the matter;

5. The subject matter and recipient of any correspondence;

6. A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;

7. The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;

8. An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;

9. The total charge for each matter;
  10. The combined total for services and disbursements for the billing period;
  11. The tax identification number of the entity awarded the personal service contract;  
and
  12. An indication on each invoice of whether or not the invoice is final.
- (e) The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed and expenses actually incurred.
- (f) The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 55, sec. 4, effective April 5, 2010; and ch. 162 sec. 15, effective July 15, 2010. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 49, effective June 26, 2009. -- Amended 1998 Ky. Acts ch. 486, sec. 3, effective July 15, 1998, prevails over ch. 120, sec. 16, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 33, effective May 30, 1997. -- Amended 1992 Ky. Acts ch. 55, sec. 11, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 496, sec. 15, effective July 13, 1990.

**Legislative Research Commission Note** (7/15/2010) This section was amended by 2010 Ky. Acts chs. 55 and 162 which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note** (7/15/98). This section was amended by 1998 Ky. Acts Chs. 120 and 486 which are in conflict. Under KRS 446.250, Acts ch. 486, which was last enacted by the General Assembly, prevails.

**45A.700 Certain personal service contracts in aggregate amounts of \$10,000 or less exempt from routine review -- Memoranda of agreement and price contracts of \$50,000 or less exempt from routine review -- Review requirement for amendments.**

(1) Personal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less during any one (1) fiscal year shall be exempt from routine review by the committee and shall be filed with the committee not more than thirty (30) days after their effective date for informational purposes only. The committee shall examine all personal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less submitted more than thirty (30) days after the effective date. The committee may periodically examine the informational copies of personal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less and may request agency participation in discussions relative to their contracts or payments. The provisions of this subsection shall not apply to price contracts for personal services.

(2) Memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less during in any one fiscal year shall be exempt from routine review by the committee and shall be filed with the committee not more than thirty (30) days after their effective date for informational purposes only. The committee shall examine all memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less submitted more than thirty (30) days after the effective date. The committee may periodically examine memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less and may request agency participation in discussions relative to their agreements or payments.

(3) If a personal service contract of less than ten thousand dollars (\$10,000) is amended to the extent the amended total of the contract exceeds ten thousand dollars (\$10,000) per fiscal year per contractor, the amended contract shall be placed on the agenda for the committee's routine review. The provisions of this subsection shall not apply to price contracts for personal services.

(4) If a memorandum of agreement or price contract for personal services of less than fifty thousand dollars (\$50,000) is amended to the extent the amended total of the agreement or contract exceeds fifty thousand dollars (\$50,000) per fiscal year per governmental body, the amended agreement or contract shall be placed on the agenda for the committee's routine review.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 486, sec. 4, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 60, sec. 3, effective July 15, 1996. -- Created 1990 Ky. Acts ch. 496, sec. 16, effective July 13, 1990.

**45A.705 Government Contract Review Committee -- Membership -- Duties -- Meeting -- Vote required to act.**

(1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.

(2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:

(a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production;

(b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;

(c) Examine the amount and duration of the contract or agreement; and

(d) Examine the appropriateness of any exchange of resources or responsibilities.

(5) If the committee determines that the contract service or agreement, other than an emergency contract approved by the secretary of the Finance and Administration Cabinet or his or her designee, is not needed or inappropriate, the motion picture or entertainment production is not beneficial or is inappropriate, the service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities are inappropriate, the committee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract, tax incentive agreement, or memorandum of agreement and shall return the personal service contract, tax incentive agreement, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his or her designee. The committee shall act on a personal service contract, tax incentive agreement, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.

(6) Upon receipt of the committee's disapproval or objection to a personal service contract, tax incentive agreement, or memorandum of agreement, the secretary of



the Finance and Administration Cabinet or his or her designee shall determine whether the personal service contract, tax incentive agreement, or memorandum of agreement shall:

- (a) Be revised to comply with the objections of the committee;
  - (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
  - (c) Remain effective as originally approved.
- (7) The secretary of the Finance and Administration Cabinet or his or her designee shall notify the committee of the action taken on personal service contracts, tax incentive agreements, and memoranda of agreement disapproved or objected to within ten (10) days from the date the personal service contracts, tax incentive agreement, or memoranda of agreement were reviewed by the committee.
- (8) Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts, tax incentive agreements, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his or her designee.

**Effective:** June 26, 2009

**History:** Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 50, effective June 26, 2009. -- Amended 2003 Ky. Acts ch. 185, sec. 5, effective March 31, 2003. -- Amended 1998 Ky. Acts ch. 120, sec. 17, effective July 15, 1998; and ch. 486, sec. 5, effective July 15, 1998. -- Created 1990 Ky. Acts ch. 496, sec. 17, effective July 13, 1990.

**45A.710** Repealed, 1997.

**Catchline at repeal:** Personal service contracts for advertising, promotional, or public relations services.

**History:** Repealed 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 44, effective May 30, 1997. -- Amended 1994 Ky. Acts ch. 216, sec. 8, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 159, sec. 4, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 496, sec. 18, effective July 13, 1990.

**45A.715 Certain contracts by Department of Revenue prohibited.**

The Department of Revenue shall not enter into any personal service contract for the collection of revenue for the state or for the prosecution of any action or proceeding for the collection of delinquent taxes owed by a resident and the assessment of omitted property owned by a resident.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 74, effective June 20, 2005. -- Created 1990 Ky. Acts ch. 496, sec. 19, effective July 13, 1990.

**45A.720 Contract for executioner not subject to KRS 45A.690 to 45A.725.**

Agreements with an individual to provide the services of executioner for the Department of Corrections shall not be subject to the provisions of KRS 45A.690 to 45A.725. The identity of an individual performing the services of executioner shall remain confidential and shall not be considered as public record for the purposes of KRS 61.870 to 61.884.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 211, sec. 9, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 496, sec. 20, effective July 13, 1990.

**45A.725 Authority of committee to establish policies and procedures relating to manner and form of notification and documentation to accompany personal service contract, tax incentive agreement, or memorandum of agreement.**

(1) The Government Contract Review Committee may establish policies and procedures concerning the manner and form of notification and the documentation to accompany the proposed personal service contract, tax incentive agreement, or memorandum of agreement.

(2) Nothing in this code shall prohibit the committee from accepting personal service contracts, tax incentive agreement, or memoranda of agreement through the use of electronic instrumentalities.

**Effective:** June 26, 2009

**History:** Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 51, effective June 26, 2009. -- Amended 1998 Ky. Acts ch. 486, sec. 6, effective July 15, 1998. -- Created 1990 Ky. Acts ch. 496, sec. 21, effective July 13, 1990.

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**200 KAR 5:307. Competitively negotiated contracts.**

RELATES TO: KRS 45A.085, 45A.090

STATUTORY AUTHORITY: KRS 45A.035, 45A.085

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.085 authorizes the secretary to promulgate administrative regulations concerning contracts awarded by competitive negotiation. This administrative regulation implements the provisions of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts.

Section 1. A contract may be awarded by competitive negotiation if the purchasing officer determines in writing that:

- (1) Due to the complex nature or technical detail of a particular procurement, specifications cannot be fairly and objectively prepared so as to permit competition in the solicitation of sealed bids;
- (2) High technology electronic equipment is available from a limited number of sources of supply and specifications cannot practicably be prepared except by reference to the specifications of the equipment of a single source of supply;
- (3) Solicitation of competitive sealed bids is not practicable; or
- (4) Conditions described in KRS 45A.085(3) or 45A.090(1) exist.

Section 2. (1) If it has been determined that it is not practical to solicit competitive bids as provided in Section 1 of this administrative regulation, except if such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by solicitation of written proposals in the manner specified by KRS 45A.080(3), 200 KAR 5:306, and 200 KAR 5:307.

(2) A solicitation of proposals for competitive negotiations shall state:

- (a) That the purchasing agency proposes to enter into competitive negotiations with responsible offerors;
- (b) The date, hour and place that written proposals shall be received;
- (c) The type of procurement involved;
- (d) A description of the supplies or services sought;
- (e) Detailed specifications, or the location where detailed specifications may be obtained;
- (f) The evaluation factors to be considered in determining the proposal most advantageous to the Commonwealth;
- (g) The proposed method of award of contract;
- (h) Other information as, in the opinion of the purchasing officer, may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits of the competitive negotiations;
- (i) The existence of a funding limitation, if determined to be in the best interest of the Commonwealth; and
- (j) The amount of the funding limit, if it is determined by the Director of the Division of Material and Procurement Services or the Director of the Division of Contracting and Administration for procurements undertaken by those divisions that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth.

(3) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 3. All written proposals received by the purchasing agency in response to a solicitation shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing officer for the procurement for opening. Proposals shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined by the purchasing officer in writing to be the most advantageous to the Commonwealth, based upon the price and the evaluation factors set forth in the solicitation.

Section 5. (1) The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If it has been provided in the solicitation that an award may be made without written or oral discussions, the purchasing officer may, upon the basis of the written proposals received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the Commonwealth. If, after the proposals have been examined, it is determined that written or oral discussions should be had with the offerors, the purchasing officer shall determine in writing, based on an individual review, those proposals received that are eligible to be selected for award of a contract. Each responsible offeror that is eligible to be selected for award of a contract shall be contacted by the purchasing officer and a meeting scheduled for discussion of the offeror's proposals. The purchasing officer shall not be required to conduct discussions under the circumstances of or relative to the topics enumerated in KRS 45A.085(6)(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both, as determined by the purchasing officer to be the most advantageous to the Commonwealth. If, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, all proposals may be rejected and, in the discretion of the purchasing officer, new proposals may be solicited as provided in Sections 1 to 4 of this administrative regulation, or the procurement may be abandoned.

(3) Procedures for conducting negotiations and for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested, may be rejected.

(4) Proposals shall be evaluated based on factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing, and made a part of the file records for the procurement.

(5) The purchasing officer may notify offerors that as of a date stated negotiations shall be closed and further negotiations modifications or clarifications of proposals shall not be received.

Section 6. The purchasing officer shall prepare a written summary of all oral discussions in competitive negotiations setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. If, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals. (5 Ky.R. 574; Am. 947; eff. 7-17-79; 9 Ky.R. 1025; 1194; eff. 4-6-83; 18 Ky.R. 1359; eff. 1-10-92; 30 Ky.R. 674; 1463; eff. 1-5-2004.)



**200 KAR 5:309. Noncompetitive negotiations.**

RELATES TO: KRS 45A.095

STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.

Section 1. Contracts may be awarded on the basis of noncompetitive negotiations only for:

- (1) Telephone, electrical energy, and other public utility services;
- (2) Other services provided within a defined geographic area pursuant to a franchise awarded pursuant to law by a city, county, or other political subdivision authorized to award the franchise;
- (3) Purchase or lease of a telephone system to serve the internal needs of state agencies or institutions;
- (4) Commodities, equipment, or services available from a sole source, as determined by the purchasing officer in writing;
- (5) Instructional materials, equipment, or supplies available from a sole source and necessary to a particular instructional program, as determined by the purchasing officer in writing;
- (6) Special supplies or equipment required for laboratory or experimental studies and necessary to a particular study, as determined by the purchasing officer in writing;
- (7) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (9) of this section, recordings, films, and works of art for museum or public display;
- (8) Commercial items purchased from a wholesaler, manufacturer, or producer of the item for, and not requiring modification or alteration prior to, resale to the general public through a resale outlet maintained by a state agency;
- (9) Professional, technical, scientific, or artistic services, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those services as prescribed by state or federal law or administrative regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of health care and related services by the Commonwealth;
- (10) Commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis if an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3);
- (11) Supplies, equipment or services from the Government of the United States, another state, or a political subdivision of the Commonwealth, or nonprofit organization organized under the laws of the Commonwealth, another state or the District of Columbia, or chartered under an Act of Congress, and lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially government, civic, educational or charitable nature;
- (12) Contracts with vendors who maintain a general service administration price agreement with the United States of America, if the contract between the Commonwealth and the vendor does not authorize a price higher than is contained in the contract between general service administration and the vendor;
- (13) Purchase of real property or interests in real property;
- (14) Purchase of fresh food and perishable items which cannot reasonably be acquired through competitive sealed bidding; and
- (15) Purchase of limited goods or services that cannot reasonably or practically be obtained through competitive sealed bidding as determined by the executive director of the Office of Material and Procurement Services.

Section 2. Contracts for professional, technical, scientific, or artistic services under Section 1(9) of this administrative regulation shall be awarded as provided in KRS 45A.690 to 45A.725, except that contracts for architectural or engineering services shall be awarded in accordance with KRS 45A.800 to 45A.838. (5 Ky.R. 576; Am. 949; eff. 7-17-79; 18 Ky. R. 1362; eff. 1-10-92; 30 Ky.R. 676; eff.1465; eff. 1-5-2004; 31 Ky.R. 1876; 32 Ky.R. 47; eff. 8-5-05.)

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**FAP 111-43-00**  
**PERSONAL SERVICE CONTRACTS**

1. An agency shall procure a Personal Service Contract by issuing a Request for Proposal for Personal Service Contract.
  - a. An agency desiring to procure a professional service shall issue a Request for Proposals (RFP) in the state's procurement system. An agency shall post the RFP to the Commonwealth's eProcurement web site for a minimum of seven (7) days. At the discretion of the agency and if stated in the RFP, a vendor may respond via the online bidding feature of the state's procurement system, in accordance with FAP 110-10-00.
  - b. The agency shall review the proposals received and record a determination of the qualification rankings of the offerors based on the evaluation factors set forth in the RFP. The determination shall be documented in the Bid Evaluation of the state's procurement system by the contracting agency.
  - c. After determining the best proposal received, the agency may negotiate a fair and reasonable compensation with the selected offeror.
  - d. The agency shall award a contract electronically from a bid evaluation in the state's procurement system. The contract shall include all terms and conditions agreed upon; the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1). If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.
  - e. A vendor wishing to exempt proprietary information from disclosure as stated in 200 KAR 5:314 shall submit a request to the secretary of the Finance and Administration Cabinet for approval before executing a contract. The request shall specifically describe the information requested to be exempted.
  - f. The agency shall maintain the original contract, signed by both parties, and the contract shall be available for review upon request. The electronic contract shall be forwarded through the agency and the Finance and Administration Cabinet for appropriate approvals. The Finance and Administration Cabinet shall file the contract with LRC.
2. A Personal Service Contract for auditing services shall not be established until the Auditor of Public Accounts has declined in writing to perform the service or has failed to respond within thirty (30) days to a written request for an audit. (KRS 45.149).
3. Exemptions from the requirements of KRS 45A.690 – 45A.725 and this policy may be approved by the secretary of the Finance and Administration Cabinet, or his designee, if an emergency condition exists or if a sole source provider is identified. To request exemption, the requesting agency shall submit a letter to the secretary of the Finance and Administration Cabinet with the following information:

- a. Approval of the agency head or secretary of the requesting cabinet or agency;
    - b. A description of the needed service and sole source justification, or a description of the emergency conditions;
  - c. An estimate of the planned amount of work involved;
  - d. An estimate of the contract cost per fiscal year or biennium, including anticipated amendments;
  - e. Identity of an agency contact person; and
  - f. Verification of the unavailability of Commonwealth personnel or the non-feasibility of utilizing Commonwealth personnel to perform the service.
4. If a governmental emergency, as defined by KRS 45A.690, requires that a vendor begin work prior to the contract being filed with LRC, the agency shall submit a letter to the secretary of the Finance and Administration Cabinet requesting an emergency effective date, and describing the circumstances that required the vendor to start work prior to filing the contract with LRC.
  5. Modification to a Personal Service Contract shall be processed in the same manner as the original contract in the state's procurement system. A modification shall be used if the parties to an established Personal Service Contract agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change.
  6. If an agency creating a Personal Service Contract does not have legal counsel in-house, the agency shall submit the original document to the Personal Service Contract Office of the Office of Material and Procurement Services. The Personal Service Contract Office shall review the agreement, secure the signature of an attorney for the Finance and Administration Cabinet, and return the original to the agency to be retained.

(KRS 45A.080)  
(KRS 45A.690 - KRS 45A.725)

## **MEMORANDUM OF AGREEMENT**

1. A Memorandum of Agreement shall not cross over the biennium, unless wholly funded by federal road fund monies.
2. All Memoranda of Agreement shall be created in the state's procurement system. The contract shall include all terms and conditions agreed upon: the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1).
3. After the contract is created, the agency shall secure the signatures of the first and second parties and electronically route the agreement to the Personal Service Contract Office of the Office of Material and Procurement Services. The document shall be reviewed and approved electronically by the Finance and Administration Cabinet, Office of General Counsel, and the secretary of the Finance and Administration Cabinet. The Finance and Administration Cabinet shall file the contract with the Government Contract Review Committee. After approval, the agreement shall be routed electronically back to the agency to retain as a permanent document. If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.
4. If an agency creating a Memorandum of Agreement does not have legal counsel in-house, the agency shall submit the original document to the Personal Service Contract Office of the Office of Material and Procurement Services. The Personal Service Contract Office shall review the agreement, secure the signature of an attorney for the Finance and Administration Cabinet, and return the original to the agency to be retained as a permanent document.
5. A Modification to a Memorandum of Agreement shall be processed in the same manner as the original document. A Modification shall be used if the parties to an established agreement agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change.

(KRS 45A.300; KRS 45A.660; KRS 45A.690)

## **GCRC Policies**

Pursuant to KRS 45A.725, the GCRC has established policies which govern rates payable for certain professional services; hourly rates v. travel expenses; multiyear contracts and contract amendments. These are located on the GCRC webpage and impact any contract established under KRS 45A.690 where applicable.

<http://www.lrc.ky.gov/statecomm/Contracts/homepage.htm>

- Policy Statement #98-1 Hourly Rate v. Travel Expense Policy
- Policy Statement #99-1 Legal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-2 Appraisal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-3 Auctioneer Services: Duties and Maximum Rate Schedule
- Policy Statement #99-4 Multiyear Government Contracts
- Policy Statement #99-5 Auditing Services; Duties and Maximum Rate Schedule
- Policy Statement #00-6 Personal Service Contract Amendment Policy

# **Legislative Research Commission Government Contract Review Committee**

## **Hourly Rates v. Travel Expenses Policy**

### ***\*Policy Statement #98-1***

It shall be a policy of the Government Contract Review Committee of the Legislative Research Commission:

1. Allow for payment for actual time spent in behalf of the State, including travel time, at a recommended hourly rate or specified acceptable fee.
2. If the hourly rate is paid for travel time, travel expenses shall not be allowed, except for overnight lodging when at the convenience of the agency.

If the hourly rate is not paid for travel time, travel expenses shall be allowed in accordance with state travel regulations

**Legislative Research Commission**  
**Government Contract Review Committee**  
**Legal Services: Duties and Maximum Rate Schedule**  
**Amended January 8, 2002**  
***\*Policy Statement 99-1\****

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for legal services that conform to the following description and maximum rate schedule:

**Private Attorneys and Law Firms**

**Duties:**

Under general supervision, provides professional legal services on a designated case or specific legal matter as a private attorney; principle, partner, or associate within a law firm; or serves as hearing officer, legal counselor, or legal representative for a state agency.

**Maximum Rate Schedule:**

Partner	Not to exceed \$125/hour
Associate	Not to exceed \$100/hour
Appellate Case	Not to exceed \$125/hour and not to exceed \$20,000/case without prior approval

Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

**Private Attorneys and Law Firms (Title Opinion)**

**Duties:**

Under general supervision, provides professional legal title examination services on certain parcels of land in various counties throughout the Commonwealth of Kentucky which the Commonwealth desires to acquire for the maintenance or construction of public improvements, roads, or roadways.

**Maximum Rate Schedule:**

Surface Title Opinion	Not to exceed \$170/title
Mineral Title Opinion	Not to exceed \$500/title, plus the appropriate hourly rate for Attorneys or Paralegals, not to exceed \$500, unless required by the complexity of title examination, in which case, prior



Updates

justification must be presented to the committee.

Not to exceed \$40/update

Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

### **Paralegals**

#### **Duties:**

By virtue of special training and under direct supervision, provides aid and legal assistance to a private attorney; principle, partner, or associate within a law firm; legal counselor; hearing officer; or legal representative of a state agency.

#### **Maximum Fee:**

Not to exceed \$40/hour

### **High Rate Areas**

#### **(1) As used in this policy:**

**(a) "Attorney" means an attorney-at-law, whether in private practice, as a member of a law firm, or as member of an association of attorneys;**

**(b) "High Rate Area" means those geographic areas recognized by the secretary of the Finance and Administration Cabinet as high rate areas by promulgation of an administrative regulation; and**

**(c) An attorney shall be considered to have a "principal place of business" located in Kentucky, if the attorney has a place of business in Kentucky and declares a business nexus in Kentucky for Kentucky income tax purposes.**

**(2) Attorneys with a principal place of business located in Kentucky shall be given a preference over attorneys with a principal place of business located outside Kentucky when selecting attorneys for legal services. State agencies shall submit to the committee, along with each contract with an out of state attorney, a list of other attorneys and law firms considered for the needed service and evidence that reasonable efforts were made to obtain legal services from an attorney with a principal place of business in Kentucky.**

**The Government Contract Review Committee may approve higher hourly rates for legal services provided in high rate areas, or for legal se**

**Legislative Research Commission  
Government Contract Review Committee**

**Appraisal Services: Duties and Maximum Rate Schedule  
Adopted March 9, 1999**

***\*Proposed Policy Statement 99-2\****

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for appraisal services that conform to the following description and maximum rate schedule:

**Real Estate Appraisers**

**Duties:**

Under general supervision, provides professional real estate appraisal services to an agency of the Commonwealth of Kentucky on specified real estate appraisal assignments for state land acquisition purposes as a real estate appraiser.

**\*Maximum Rate Schedule:**

Real Estate Appraiser

Not to exceed \$560 per day

**Resource Appraisers**

**Duties:**

Under general supervision, provides professional resource and mineral appraisal reports to an agency of the Commonwealth of Kentucky on specified real estate appraisal assignments which the Commonwealth desires to acquire for the maintenance or construction of public improvements, roads, or roadways or for state land acquisition purposes.

**\*Maximum Rate Schedule:**

Resource Appraiser  
unless

Not to exceed \$600 per day,

required by the complexity of the appraisal, in which case, prior justification must be presented to the committee.

\*This maximum rate schedule should be utilized in negotiating for both actual appraisal services and for court appearances.

**Legislative Research Commission  
Government Contract Review Committee**

**Auctioneer Services: Duties and Maximum Rate Schedule  
Adopted April 13, 1999**

***\*Policy Statement 99-3\****

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts and price contracts for auctioneer services that conform to the following description and maximum rate schedule:

**Auctioneers**

**Duties:**

Under general direction, is responsible for the public auction of surplus real and/or personal property no longer useful to the Commonwealth of Kentucky as designated by the individual state agencies.

**Maximum Rate Schedule:**

**A. Real Property**

<u>Disposition of Real Property</u>	<u>Dollar value</u>	<u>Maximum Rate</u>
(1st)	\$50,000.00	6%
(Next)	\$50,000.00	5%
(Next)	\$100,000.00	4%
(Over)	\$200,000.00	3%

**B. Personal Property**

<u>Disposition of Personal Property</u>	<u>Dollar value</u>	<u>Maximum Rate</u>
(1st)	\$10,000.00	10%
(Next)	\$15,000.00	5%
(Next)	\$25,000.00	4%
(Over)	\$50,000.00	3%

**Alternative Maximum Rate Schedule:**

**Real Property and Personal Property**

Not to exceed \$800/event for auctioneer services, unless required by the complexity of auction, in which case, prior justification must be presented to the committee.

Legislative Research Commission  
Government Contract Review Committee

Multiyear Government Contracts  
Revised  
March 8, 2001

\*Policy Statement 99-4\*

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts, price contracts for personal services, memoranda of agreement, memoranda of understanding, program administration contracts, interlocal agreements (to which the Commonwealth is a party), privatization contracts, or similar devices and instruments under the jurisdiction of the committee that are entered into and concluded prior to the end of the biennium in which the contract or agreement was made.

**Legislative Research Commission  
Government Contract Review Committee**

**Auditing Services: Duties and Maximum Rate Schedule  
Adopted August 10, 1999**

***\*Policy Statement 99-5\****

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for auditing services that conform to the following description and maximum rate schedule:

**Private Auditors and Auditing Firms**

**Duties:**

Under general supervision, provides independent professional auditing of accounts, financial transactions, and spending of a state agency in accordance with generally accepted auditing principals and standards as a private auditor or as a principle, partner, manager, or staff within an auditing firm.

**\*Maximum Rate Schedule:**

Principle or Partner	Not to exceed \$125/hour
Senior Auditor or Manager	Not to exceed \$100/hour
Junior Auditor or Staff Auditor	Not to exceed \$75/hour

\*Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity or uniqueness of the audit, in which case, prior justification must

**Legislative Research Commission  
Government Contract Review Committee**

**Personal Service Contract Amendment Policy  
Adopted June 13, 2000**

***\*Policy Statement #00-6\****

It shall be a policy of the Government Contract Review Committee of the Legislative Research Commission that no personal service contract amendment coming before the committee for review shall be in order any sooner than ninety (90) days after a committee action on the contract, unless the amendment is supported by a detailed explanation, addressed to the committee, citing specific valid and justifiable reasons for amendment of the contract. The failure of a contracting body to accurately estimate the total amount of a contract or proposed contract shall not constitute the sole reason for amending a government contract.

Procurement Type/Document Code  
Cited Authority/Description

Procurement Type	Document Code	Cited Authority	Description
9	PO2 or PON2	Specific to Agency and Grant	Grant
13	PON2	FAP-111-44-00	Memorandum of Agreement
14	PO2	KRS45A.690(1)(D)2	Auditors of Public Accounts - Not MOA
14	PO2	KRS45A.690(1)(D)3	Agreements between state agencies as required by federal or state law
14	PO2	KRS45A.690(1)(D)4	University Agreements - Not MOA
14	PO2	KRS45A.690(1)(D)11	Other Agreements - Not MOA
17	PON2	FAP-111-09-00-12	Not feasible to bid
17	PON2	FAP-111-43-00-STD	Personal Service Contract - Standard
17	PON2	FAP-111-43-00-03-STD	PSC Sole Source or Emergency Exemption - Standard
17	PON2	FAP-111-43-00-L	Personal Service Contract - Legal
17	PON2	FAP-111-43-00-03-L	PSC Sole Source or Emergency Exemption - Legal